

Texas Historical Statutes Project

1895
REVISED CIVIL STATUTES
OF THE
STATE OF TEXAS



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REVISED CIVIL STATUTES

OF THE

STATE OF TEXAS

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

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

THE
REVISED STATUTES
 OF THE
STATE OF TEXAS.

TITLE I.
Adoption.

[See "Descent and Distribution," Article 1690.]

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

Article 1. [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. [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., generally, 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.) Article 3. [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.

Oaths, etc., generally by whom administered. (Act Feb. 5, 1887, p. 5.) Art. 4. [4] All oaths, affidavits or affirmations necessary or required by law may be administered, and a certificate of the fact given, by any judge or clerk of a court of record, justice of the peace, or by any notary public, within this state.

Affidavit may be made by agent or attorney. (Act Jan. 11, 1856, p. 13.) P. D. 35. Art. 5. [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.

All affidavits must be in writing, and signed. Art. 6. [6] All affidavits provided for in this title shall be in writing and signed by the party making the same.

Officers authorized to take affidavits. (Act Feb. 5, 1887, p. 5.) Art. 7. [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 the officers named in article 4 of this title.

2. If taken without this state, and within the United States, before any clerk of a court of record 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. [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."
For qualification of electors, see "Elections."]

	Article		Article
Alien ownership of land inhibited.....	9	Must alienate in ten years unless under	
Under certain circumstances and condi-		disability	12
tions permitted.....	10	Good faith required in conveyances.....	13
Interest in liens and acquisitions of land		Proceedings to escheat, by whom in-	
under foreclosures and to collect debts		stituted and when, notice required....	14
permitted.....	11	Proceedings after judgment of escheat..	15

Article 9. No alien or person who is not a citizen of the United States shall acquire title to or own any lands in the state of Texas, except as hereinafter provided, but he shall have and enjoy in the state of Texas such rights as to personal property 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, except as the same may be affected by the provisions of this title and the general laws of the state.

Alien ownership of lands inhibited. (Acts of 1892, p. 6.)

Art. 10. This title shall not apply to land now owned in this state by aliens so long as it is held by the present owners, nor to any alien who is or shall become a bona fide inhabitant of the state of Texas; and any alien who is or shall become a bona fide inhabitant of the state of Texas shall have the right to acquire and hold lands in this state upon the same terms as citizens of the state of Texas during the continuance of the bona fide residence of such alien in this state; provided, that if any such resident alien shall cease to be a bona fide inhabitant of this state, then such alien shall have ten years from the time he ceases to be such bona fide inhabitant in which to alienate such lands. The provisions of this title shall not be construed to prevent any persons not citizens of the United States from acquiring or holding lots or parcels of lands in any incorporated or platted city, town, or village in this state; provided further, that any alien who shall become an actual 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.

Under certain circumstances and conditions permitted. Ib.

Art. 11. The provisions of this title shall not prevent aliens from acquiring lands, or any interest therein, in the ordinary course of justice in the collection of debts; nor from acquiring liens upon real estate, or any interest therein; nor from lending money and securing the same upon real estate, or any interest therein; nor from enforcing any such lien; nor from acquiring and holding title to such real estate, or any interest therein, upon which a lien may have heretofore or may hereafter be fixed, or upon which a loan of money may have been heretofore or hereafter may be made and secured.

Interest in liens and acquisitions of land under foreclosures, and to collect debts permitted. Ib.

Must alienate in ten years unless under disability.
Ib.

Art. 12. All non-resident aliens who may hereafter acquire real estate in Texas by devise, descent, or by purchase under the provisions of this title may hold the same for ten years; provided, that if any such non-resident alien is a minor he may hold such real estate for ten years from the time of reaching his or her majority, or if of unsound mind for ten years after the appointment of a legal guardian.

Good faith required in conveyances.
Ib.

Art. 13. Any alien who shall hereafter hold lands in Texas, in contravention of the provisions of this title, may, nevertheless, convey the fee simple title thereof at any time before the institution of escheat proceedings as hereinafter provided; provided, however, that if any such conveyance shall be made by such alien either to an alien or to a citizen of the United States, in trust, and for the purpose and with the intention of evading the provisions of this title, such conveyance shall be null and void, and any such land so conveyed shall be forfeited and escheated to the state absolutely.

Proceedings to escheat; by whom instituted and when; notice required.
Ib.

Art. 14. It shall be the duty of the attorney-general, or the district or county attorney, when he shall be informed or have reason to believe that lands in the state are being held contrary to the provisions of this title, to institute suit in behalf of the state of Texas in the district court of the county where such lands are situated, praying for the escheat of the same on behalf of the state, as in cases of estates of persons dying without the devise thereof and having no heirs; provided, before any such suit is instituted the attorney-general, district or county attorney, as the case may be, shall give ninety days notice by registered letter of his intention to sue, directed to the owner of said land or the person who last rendered same for taxes, or his agents, and to all of the persons having an interest in such land, of which the plaintiff has actual or constructive notice.

Proceedings after judgment of escheat.
Ib.

Art. 15. If it shall be determined upon the trial of any such escheat proceedings that lands are held contrary to the provisions of this title, the court trying said cause shall render judgment condemning such lands, and shall order the same to be sold under execution, and the proceeds of such sale, after deducting the cost of such suit, shall be paid to the clerk of such court so rendering judgment, and said funds shall remain in the hands of such clerk for one year from the date of such payment, subject to the order of the alien owner of such lands or his heirs or legal representatives, and if not claimed within the period of one year, such clerk shall pay the same into the treasury of the state for the benefit of the available school fund of the state of Texas; provided, that when any money shall have been paid to the treasurer, as hereinbefore provided, an alien, his heirs or assigns, may recover the same from the state in the same manner prescribed in articles 2210, 2211, 2212, 2213, 2214, and 2218 of chapter 27, title 39, of the Revised Civil Statutes of the state of Texas, relating to the recovery of funds of estates of decedents by the heirs, etc., where the same has been paid into the treasury by the administrator or executor; provided, that the defendant at any time before final judgment may suggest that he has conformed with the law, which being admitted or proved, said suit shall be dismissed on payment of costs and reasonable attorney's fee to be fixed by the court.

TITLE IV. Apportionment.

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COUNTIES.	Senatorial District	Representative District	Congressional District	Judicial District	Sup. Judicial District
Anderson	13	29,31	2	3	1
Andrews	28	106	13	32	12
Angelina	13	31	2	2	1
Aransas	23	87	11	36	1
Archer	29	104	13	30	2
Armstrong	29	102	13	47	2
Atascosa	22	88,90	11	36	4
Austin	16	42	10	22	1
Bailey	29	102	13	50	2
Bandera	24	92	12	38	4
Bastrop	19	52	9	21	3
Baylor	29	104	13	50	2
Bee	22	83	11	24	4
Bell	27	65	7	27	3
Bexar	24	89,90	12	37,45	3
Blanco	21	98	12	33	3
Borden	28	106	13	32	2
Bosque	27	76,77	6	18	2
Bowie	1	1,3	4	5	5
Brazoria	17	40	10	23	1
Brazos	12	55	7	20	1
Brewster	25	96	12	41	4
Briscoe	29	102	13	47	2
Brown	26	108	8	35	3
Buchel	25	96	12	41	4
Burleson	19	48,49	9	21	1
Burnet	20	53	9	27	3
Caldwell	21	51	9	22	3
Calhoun	22	83	11	24	1
Callahan	28	107	13	42	2
Cameron	23	85	11	28	1
Camp	2	24,25	4	5	5
Carson	29	102	13	31	2
Cass	1	2,3	4	5	5
Castro	29	102	13	47	2
Chambers	17	36	1	9	1
Cherokee	13	28,31	2	2	1
Childress	29	102	13	46	2
Clay	29	105	13	30	2
Cochran	29	106	13	50	2
Coke	25	95	12	51	3
Coleman	26	108	8	35	3
Collin	5	14	5	15	5
Collingsworth	29	102	13	46	2
Colorado	18	43,46	10	25	1
Comal	21	98	12	38	3
Comanche	26	101	8	42	2
Concho	26	94	12	35	3
Cooke	4	9,13	5	16	2
Coryell	27	67	8	29	3
Cottle	29	102	13	50	2
Crane	28	106	12	32	2
Crockett	25	95	12	51	4
Crosby	29	106	13	50	2
Dallam	29	102	13	47	2
Dallas	6	73,74	6	14,44	5
Dawson	28	106	13	32	2
Deaf Smith	29	102	13	42	2
Delta	2	19	4	8	5
Denton	31	12,13	5	16	2
De Witt	22	82	11	24	1
Dickens	29	102	13	50	2
Dimmit	25	91	11	36	4

COUNTIES.	Senatorial District	Representative District	Congressional District	Judicial District	Sup. Judicial District
Donley	29	102	13	46	2
Duval	23	87	11	49	4
Eastland	28	81	13	42	2
Ector	28	106	12	32	2
Edwards	25	95	12	41	4
Ellis	10	68,70	6	40	5
El Paso	25	96	13	34	4
Encinal	23	86	11	49	4
Erath	26	99	8	29	2
Falls	11	61,72	7	19	3
Fannin	3	7	5	6	5
Fayette	18	45	10	22	1
Fisher	28	106	13	39	2
Floyd	29	102	13	50	2
Foard	29	102	13	46	2
Foley	25	96	12	41	3
Fort Bend	16	41	10	23	1
Franklin	2	19	4	5	5
Freestone	12	57	1	13	1
Frio	22	91	11	36	4
Gaines	28	106	13	32	2
Galveston	17	39	10	10	1
Garza	28	106	13	32	2
Gillespie	24	98	12	33	4
Glasscock	28	106	12	32	2
Goliad	22	82	11	24	1
Gonzales	21	46,84	10	25	4
Gray	29	102	13	31	2
Grayson	4	8	5	15	5
Greer	29	103	13	46	2
Gregg	7	22	3	7	1
Grimes	15	54	1	12	1
Guadalupe	21	97	11	25	4
Hale	29	102	13	50	2
Hall	29	102	13	46	2
Hamilton	27	76,77	8	29	3
Hansford	29	102	13	31	2
Hardeman	29	102	13	46	2
Hardin	14	36	2	9	1
Harris	16	37	1	11	1
Harrison	8	21,22	2	4	5
Hartley	29	102	13	47	2
Haskell	28	106	13	39	2
Hays	21	98	9	22	3
Hemphill	29	102	13	31	2
Henderson	9	59	3	3	3
Hidalgo	23	85	11	28	1
Hill	10	75,77	6	18	5
Hockley	29	106	13	50	2
Hood	30	80	8	28	2
Hopkins	2	18,19	4	3	5
Houston	13	30,31	2	3	1
Howard	28	106	13	32	2
Hunt	5	15,17	3	8	5
Hutchinson	29	102	13	31	2
Irion	25	95	12	51	3
Jack	29	105	13	43	2
Jackson	22	83	11	23	1
Jasper	14	34	2	1	1
Jefferson	14	36	2	1	1
Jeff Davis	25	96	12	41	4
Johnson	10	69,70	6	18	5
Jones	28	107	13	39	2

TITLE IV.—APPORTIONMENT.

COUNTIES.	Senatorial District	Representative District	Congressional District	Judicial District	Sup. Judicial District	COUNTIES.	Senatorial District	Representative District	Congressional District	Judicial District	Sup. Judicial District
Karnes	22	88,90	11	24	4	Randall	29	102	13	47	2
Kaufman	9	16,17	6	40	5	Red River	2	4,5	4	6	5
Kendall	24	92	12	38	4	Reeves	28	106	13	34	2
Kent	28	106	13	39	2	Refugio	22	83	11	24	1
Kerr	24	92	12	38	4	Roberts	29	102	13	31	2
Kimble	25	95	12	33	4	Robertson	12	63,64	7	20	3
King	29	102	13	50	2	Rockwall	6	74	3	40	5
Kinney	25	96	12	41	4	Runnels	26	95	8	35	3
Knox	29	104	13	50	2	Rusk	8	26,27	3	2	1
Lamar	3	6	4	6	5	Sabine	14	33	2	4	1
Lamb	29	102	13	50	2	San Augustine	14	34	2	2	1
Lampasas	27	53	8	27	3	San Jacinto	15	35	2	2	1
La Salle	22	91	11	36	4	San Patricio	23	87	11	36	1
Lavaca	18	44,46	10	25	1	San Saba	26	94	12	33	3
Lee	19	48,49	9	21	3	Schleicher	25	95	12	51,33	4
Leon	15	56,64	1	12	1	Scurry	28	106	13	39	2
Liberty	14	36	2	9	1	Shackelford	28	107	13	42	2
Limestone	12	60,64	7	13	1	Shelby	8	33	2	2	1
Lipscomb	29	92	13	31	2	Sherman	29	102	13	47	2
Live Oak	22	88,90	11	36	4	Smith	7	23,24	3	7	1
Llano	25	93	12	33	3	Somervell	30	77	8	29	2
Loving	28	106	13	34	2	Starr	23	85	11	28	1
Lubbock	29	106	13	50	2	Stephens	28	104	13	42	2
Lynn	28	106	13	32	2	Stonewall	28	106	13	39	2
Madison	15	55,56,64	1	12	1	Sterling	25	95	12	51	3
Marion	1	3	4	5	5	Sutton	25	95	12	51,33	4
Martin	28	106	13	32	2	Swisher	29	102	13	47	2
Mason	25	93	12	33	4	Tarrant	30	78,80	8	48,17	2
Matagorda	17	40	10	23	1	Taylor	28	107	13	42	2
Maverick	25	96	12	41	4	Terry	28	106	13	32	2
McCulloch	26	94	12	35	3	Throckmorton	29	104	13	39	2
McLennan	11	66	7	19,54	3	Titus	2	5	4	5	5
McMullen	22	91	11	36	4	Tom Green	25	95	12	51	3
Medina	24	91	12	38	4	Travis	20	50	9	53,26	3
Menard	25	95	12	33	4	Trinity	13	38	1	12	1
Midland	28	106	12	32	2	Tyler	14	36	2	1	1
Milam	11	62,72	7	20	3	Upshur	7	24,25	3	7	5
Mills	26	94	8	27	3	Upton	28	106	12	32	2
Mitchell	28	106	13	32	2	Uvalde	25	91	11	38	4
Montague	31	10	5	16	2	Val Verde	25	96	12	41	4
Montgomery	15	38	1	9	1	Van Zandt	7	100	3	7	5
Moore	29	102	13	47	2	Victoria	22	83	11	24	1
Morris	1-5	4	5	5	5	Walker	15	38	1	12	1
Motley	29	102	13	50	2	Waller	16	41	1	23	1
Nacogdoches	14	32	2	2	1	Ward	28	106	13	34	2
Navarro	9	58,59	6	13	5	Washington	19	47,48	9	21	1
Newton	14	34	2	1	1	Webb	23	86	11	49	4
Nolan	28	106	13	32	2	Wharton	17	46	11	23	1
Nueces	23	87	11	28	1	Wheeler	29	102	13	31	2
Ochiltree	29	102	13	31	2	Wichita	29	103	13	30	2
Oldham	29	102	13	47	2	Wilbarger	29	103	13	46	2
Orange	14	36	2	1	1	Williamson	20	71,72	9	26	3
Palo Pinto	28	81	13	29	2	Wilson	22	88,90	11	25	4
Panola	8	27	2	4	1	Winkler	28	106	13	34	2
Parker	30	79,80	8	43	2	Wise	21	11,13	13	43	2
Parmer	29	102	13	47	2	Wood	7	20	3	7	5
Pecos	25	96	12	41	4	Yoakum	28	106	13	32	2
Polk	15	35	2	9	1	Young	28	104	13	30	2
Potter	29	102	13	47	2	Zapata	23	85	11	49	4
Presidio	25	96	12	34	4	Zavalla	25	91	11	36	4
Rains	7	20	3	8	5						

Article 16. [11] The senatorial districts of the state of Texas shall hereafter be composed respectively of the following named counties, each of which districts shall be entitled to elect one senator, to-wit:

SENATORIAL DISTRICTS.

- No. 1. Bowie, Cass, Marion and Morris.
- No. 2. Red River, Titus, Camp, Franklin, Hopkins and Delta.
- No. 3. Lamar and Fannin.
- No. 4. Grayson and Cooke.
- No. 5. Collin and Hunt.
- No. 6. Dallas and Rockwall.
- No. 7. Rains, Van Zandt, Wood, Smith, Gregg and Upshur.
- No. 8. Harrison, Rusk, Panola and Shelby.
- No. 9. Navarro, Henderson and Kaufman.

- No. 10. Ellis, Johnson and Hill.
 No. 11. McLennan, Falls and Milam.
 No. 12. Limestone, Freestone, Robertson and Brazos.
 No. 13. Anderson, Cherokee, Houston, Angelina and Trinity.
 No. 14. Nacogdoches, San Augustine, Sabine, Newton, Jasper, Tyler, Liberty, Hardin, Orange and Jefferson.
 No. 15. Leon, Madison, Grimes, Montgomery, Walker, San Jacinto and Polk.
 No. 16. Harris, Fort Bend, Waller and Austin.
 No. 17. Chambers, Galveston, Brazoria, Matagorda and Wharton.
 No. 18. Colorado, Lavaca and Fayette.
 No. 19. Washington, Burleson, Lee and Bastrop.
 No. 20. Williamson, Travis and Burnet.
 No. 21. Gonzales, Caldwell, Guadalupe, Comal, Hays and Blanco.
 No. 22. Jackson, Calhoun, Victoria, De Witt, Goliad, Refugio, Bee, Live Oak, Karnes, Wilson, Atascosa, McMullen, La Salle and Frio.
 No. 23. Cameron, Hidalgo, Starr, Zapata, Webb, Encinal, Duval, Nueces, San Patricio and Aransas.
 No. 24. Bexar, Medina, Bandera, Kendall, Kerr and Gillespie.
 No. 25. Llano, Mason, Kimble, Menard, Schleicher, Sutton, Crockett, Tom Green, Coke, Sterling, Irion, Pecos, Buchel, Foley, Brewster, Presidio, Jeff Davis, El Paso, Val Verde, Edwards, Kinney, Uvalde, Zavalla, Dimmit and Maverick.
 No. 26. Erath, Comanche, Mills, San Saba, McCulloch, Concho, Runnels, Coleman and Brown.
 No. 27. Bell, Lampasas, Coryell, Hamilton and Bosque.
 No. 28. Palo Pinto, Stephens, Eastland, Callahan, Taylor, Nolan, Mitchell, Howard, Martin, Andrews, Glasscock, Midland, Ector, Winkler, Loving, Ward, Crane, Upton, Reeves, Gaines, Yoakum, Terry, Lynn, Dawson, Bord Garza, Kent, Scurry, Fisher, Stone-wall, Haskell, Jones and Shackelford.
 No. 29. Jack, Young, Throckmorton, Clay, Archer, Wichita, Wilbarger, Baylor, Knox, Foard, Hardeman, Greer, King, Dickens, Crosby, Lubbock, Hockley, Cochran, Bailey, Lamb, Hale, Floyd, Motley, Cottle, Childress, Hall, Briscoe, Swisher, Castro, Parmer, Deaf Smith, Randall, Armstrong, Donley, Collingsworth, Wheeler, Gray, Carson, Potter, Oldham, Hartley, Moore, Hutchinson, Roberts, Hemphill, Lipscomb, Ochiltree, Hansford, Sherman and Dal-lam.
 No. 30. Tarrant, Parker, Hood and Somervell.
 No. 31. Denton, Wise and Montague.
- Art. 17. [12] The county judges of the following counties shall receive returns and count the votes and issue certificates of election to persons receiving the highest number of votes for senator at any election in their respective districts, to-wit:
- First district, Bowie county.
 Second district, Red River county.
 Third district, Lamar county.
 Fourth district, Grayson county.
 Fifth district, Collin county.
 Sixth district, Dallas county.
 Seventh district, Smith county.
 Eighth district, Rusk county.
 Ninth district, Navarro county.

Tenth district, Ellis county.
 Eleventh district, McLennan county.
 Twelfth district, Limestone county.
 Thirteenth district, Cherokee county.
 Fourteenth district, Tyler county.
 Fifteenth district, Leon county.
 Sixteenth district, Harris county.
 Seventeenth district, Galveston county.
 Eighteenth district, Colorado county.
 Nineteenth district, Lee county.
 Twentieth district, Williamson county.
 Twenty-first district, Hays county.
 Twenty-second district, Bee county.
 Twenty-third district, Nueces county.
 Twenty-fourth district, Bexar county.
 Twenty-fifth district, Tom Green county.
 Twenty-sixth district, Brown county.
 Twenty-seventh district, Bell county.
 Twenty-eighth district, Eastland county.
 Twenty-ninth district, Clay county.
 Thirtieth district, Tarrant county.
 Thirty-first district, Wise county.

REPRESENTATIVE DISTRICTS.

Art. 18. [13] The state of Texas is hereby apportioned into representative districts, and the number of representatives in each district shall be as follows:

No. 1. The first district, composed of the county of Bowie, and shall elect one representative.

No. 2. The second district, composed of the county of Cass, and shall elect one representative.

No. 3. The third district, composed of the counties of Bowie, Cass and Marion, and shall elect one representative.

No. 4. The fourth district, composed of the county of Red River, and shall elect one representative.

No. 5. The fifth district, composed of the counties of Morris, Titus and Red River, and shall elect one representative.

No. 6. The sixth district, composed of the county of Lamar, and shall elect two representatives.

No. 7. The seventh district, composed of the county of Fannin, and shall elect two representatives.

No. 8. The eighth district, composed of the county of Grayson, and shall elect three representatives.

No. 9. The ninth district, composed of the county of Cooke, and shall elect one representative.

No. 10. The tenth district, composed of the county of Montague, and shall elect one representative.

No. 11. The eleventh district, composed of the county of Wise, and shall elect one representative.

No. 12. The twelfth district, composed of the county of Denton, and shall elect one representative.

No. 13. The thirteenth district, composed of the counties of Cooke, Denton and Wise, and shall elect one representative.

No. 14. The fourteenth district, composed of the county of Collin, and shall elect two representatives.

No. 15. The fifteenth district, composed of the county of Hunt, and shall elect one representative.

No. 16. The sixteenth district, composed of the county of Kaufman, and shall elect one representative.

No. 17. The seventeenth district, composed of the counties of Hunt and Kaufman, and shall elect one representative.

No. 18. The eighteenth district, composed of the county of Hopkins, and shall elect one representative.

No. 19. The nineteenth district, composed of the counties of Hopkins, Franklin and Delta, and shall elect one representative.

No. 20. The twentieth district, composed of the counties of Wood and Rains, and shall elect one representative.

No. 21. The twenty-first district, composed of the county of Harrison, and shall elect one representative.

No. 22. The twenty-second district, composed of the counties of Harrison and Gregg, and shall elect one representative.

No. 23. The twenty-third district, composed of the county of Smith, and shall elect one representative.

No. 24. The twenty-fourth district, composed of the counties of Smith, Upshur and Camp, and shall elect one representative.

No. 25. The twenty-fifth district, composed of the counties of Upshur and Camp, and shall elect one representative.

No. 26. The twenty-sixth district, composed of the county of Rusk, and shall elect one representative.

No. 27. The twenty-seventh district, composed of the counties of Rusk and Panola, and shall elect one representative.

No. 28. The twenty-eighth district, composed of the county of Cherokee, and shall elect one representative.

No. 29. The twenty-ninth district, composed of the county of Anderson, and shall elect one representative.

No. 30. The thirtieth district, composed of the county of Houston, and shall elect one representative.

No. 31. The thirty-first district, composed of the counties of Houston, Anderson, Cherokee and Angelina, and shall elect one representative.

No. 32. The thirty-second district, composed of the county of Nacogdoches, and shall elect one representative.

No. 33. The thirty-third district, composed of the counties of Shelby and Sabine, and shall elect one representative.

No. 34. The thirty-fourth district, composed of the counties of San Augustine, Newton and Jasper, and shall elect one representative.

No. 35. The thirty-fifth district, composed of the counties of San Jacinto and Polk, and shall elect one representative.

No. 36. The thirty-sixth district, composed of the counties of Tyler, Hardin, Liberty, Jefferson, Orange and Chambers, and shall elect two representatives.

No. 37. The thirty-seventh district, composed of the county of Harris, and shall elect two representatives.

No. 38. The thirty-eighth district, composed of the counties of Montgomery, Walker and Trinity, and shall elect two representatives.

No. 39. The thirty-ninth district, composed of the county of Galveston, and shall elect two representatives.

No. 40. The fortieth district, composed of the counties of Brazoria and Matagorda, and shall elect one representative.

No. 41. The forty-first district, composed of the counties of Fort Bend and Waller, and shall elect one representative.

No. 42. The forty-second district, composed of the county of Austin, and shall elect one representative.

No. 43. The forty-third district, composed of the county of Colorado, and shall elect one representative.

No. 44. The forty-fourth district, composed of the county of Lavaca, and shall elect one representative.

No. 45. The forty-fifth district, composed of the county of Fayette, and shall elect two representatives.

No. 46. The forty-sixth district, composed of the counties of Wharton, Colorado, Lavaca and Gonzales, and shall elect one representative.

No. 47. The forty-seventh district, composed of the county of Washington, and shall elect one representative.

No. 48. The forty-eighth district, composed of the counties of Washington, Burleson and Lee, and shall elect one representative.

No. 49. The forty-ninth district, composed of the counties of Burleson and Lee, and shall elect one representative.

No. 50. The fiftieth district, composed of the county of Travis, and shall elect two representatives.

No. 51. The fifty-first district, composed of the county of Caldwell, and shall elect one representative.

No. 52. The fifty-second district, composed of the county of Bastrop, and shall elect one representative.

No. 53. The fifty-third district, composed of the counties of Burnet and Lampasas, and shall elect one representative.

No. 54. The fifty-fourth district, composed of the county of Grimes, and shall elect one representative.

No. 55. The fifty-fifth district, composed of the counties of Brazos and Madison, and shall elect one representative.

No. 56. The fifty-sixth district, composed of the counties of Leon and Madison, and shall elect one representative.

No. 57. The fifty-seventh district, composed of the county of Freestone, and shall elect one representative.

No. 58. The fifty-eighth district, composed of the county of Navarro, and shall elect one representative.

No. 59. The fifty-ninth district, composed of the counties of Navarro and Henderson, and shall elect one representative.

No. 60. The sixtieth district, composed of the county of Limestone, and shall elect one representative.

No. 61. The sixty-first district, composed of the county of Falls, and shall elect one representative.

No. 62. The sixty-second district, composed of the county of Milam, and shall elect one representative.

No. 63. The sixty-third district, composed of the county of Robertson, and shall elect one representative.

No. 64. The sixty-fourth district, composed of the counties of Limestone, Robertson, Leon and Madison, and shall elect one representative.

No. 65. The sixty-fifth district, composed of the county of Bell, and shall elect two representatives.

No. 66. The sixty-sixth district, composed of the county of McLennan, and shall elect two representatives.

No. 67. The sixty-seventh district, composed of the county of Coryell, and shall elect one representative.

No. 68. The sixty-eighth district, composed of the county of Ellis, and shall elect one representative.

No. 69. The sixty-ninth district, composed of the county of Johnson, and shall elect one representative.

No. 70. The seventieth district, composed of the counties of Ellis and Johnson, and shall elect one representative.

No. 71. The seventy-first district, composed of the county of Williamson, and shall elect one representative.

No. 72. The seventy-second district, composed of the counties of Williamson, Milam and Falls, and shall elect one representative.

No. 73. The seventy-third district, composed of the county of Dallas, and shall elect three representatives.

No. 74. The seventy-fourth district, composed of the counties of Dallas and Rockwall, and shall elect one representative.

No. 75. The seventy-fifth district, composed of the county of Hill, and shall elect one representative.

No. 76. The seventy-sixth district, composed of the counties of Bosque and Hamilton, and shall elect one representative.

No. 77. The seventy-seventh district, composed of the counties of Hill, Bosque, Hamilton and Somervell, and shall elect one representative.

No. 78. The seventy-eighth district, composed of the county of Tarrant, and shall elect two representatives.

No. 79. The seventy-ninth district, composed of the county of Parker, and shall elect one representative.

No. 80. The eightieth district, composed of the counties of Parker, Tarrant and Hood, and shall elect one representative.

No. 81. The eighty-first district, composed of the counties of Palo Pinto and Eastland, and shall elect one representative.

No. 82. The eighty-second district, composed of the counties of De Witt and Goliad, and shall elect one representative.

No. 83. The eighty-third district, composed of the counties of Bee, Calhoun, Jackson, Refugio and Victoria, and shall elect one representative.

No. 84. The eighty-fourth district, composed of the county of Gonzales, and shall elect one representative.

No. 85. The eighty-fifth district, composed of the counties of Cameron, Zapata, Hidalgo and Starr, and shall elect two representatives.

No. 86. The eighty-sixth district, composed of the counties of Webb and Encinal, and shall elect one representative.

No. 87. The eighty-seventh district, composed of the counties of Duval, Nueces, San Patricio and Aransas, and shall elect one representative.

No. 88. The eighty-eighth district, composed of the counties of Atascosa, Karnes, Wilson and Live Oak, and shall elect one representative.

No. 89. The eighty-ninth district, composed of the county of Bexar, and shall elect two representatives.

No. 90. The ninetieth district, composed of the counties of Bexar, Atascosa, Karnes, Wilson and Live Oak, and shall elect one representative.

No. 91. The ninety-first district, composed of the counties of McMullen, La Salle, Dimmit, Zavalla, Uvalde, Medina and Frio, and shall elect one representative.

No. 92. The ninety-second district, composed of the counties of Bandera, Kerr and Kendall, and shall elect one representative.

No. 93. The ninety-third district, composed of the counties of Llano and Mason, and shall elect one representative.

No. 94. The ninety-fourth district, composed of the counties of Concho, McCulloch, San Saba and Mills, and shall elect one representative.

No. 95. The ninety-fifth district, composed of the counties of Crockett, Sutton, Schleicher, Kimble, Menard, Runnels, Coke, Sterling, Tom Green, Irion and Edwards, and shall elect one representative.

No. 96. The ninety-sixth district, composed of the counties of El Paso, Jeff Davis, Presidio, Brewster, Foley, Buchel, Pecos, Val Verde, Kinney and Maverick, and shall elect two representatives.

No. 97. The ninety-seventh district, composed of the county of Guadalupe, and shall elect one representative.

No. 98. The ninety-eighth district, composed of the counties of Blanco, Gillespie, Hays and Comal, and shall elect two representatives.

No. 99. The ninety-ninth district, composed of the county of Erath, and shall elect one representative.

No. 100. The one hundredth district, composed of the county of Van Zandt, and shall elect one representative.

No. 101. The one hundred and first district, composed of the county of Comanche, and shall elect one representative.

No. 102. The one hundred and second district, composed of the counties of Dallam, Sherman, Hansford, Ochiltree, Lipscomb, Hemphill, Roberts, Hutchinson, Moore, Hartley, Oldham, Potter, Carson, Gray, Wheeler, Collingsworth, Donley, Armstrong, Randall, Deaf Smith, Parmer, Castro, Swisher, Briscoe, Hall, Childress, Bailey, Lamb, Hale, Floyd, Motley, Cottle, Hardeman, Foard, Dickens and King, and shall elect one representative.

No. 103. The one hundred and third district, composed of the counties of Greer, Wilbarger and Wichita, and shall elect one representative.

No. 104. The one hundred and fourth district, composed of the counties of Knox, Baylor, Archer, Throckmorton, Young and Stephens, and shall elect one representative.

No. 105. The one hundred and fifth district, composed of the counties of Clay and Jack, and shall elect one representative.

No. 106. The one hundred and sixth district, composed of the counties of Reeves, Loving, Winkler, Ward, Crane, Upton, Ector, Midland, Glasscock, Andrews, Martin, Howard, Mitchell, Nolan, Fisher, Scurry, Borden, Dawson, Gaines, Yoakum, Terry, Lynn, Garza, Kent, Stonewall, Haskell, Crosby, Lubbock, Hockley and Cochran, and shall elect one representative.

No. 107. The one hundred and seventh district, composed of the counties of Jones, Shackelford, Callahan and Taylor, and shall elect one representative.

No. 108. The one hundred and eighth district, composed of the counties of Brown and Coleman, and shall elect one representative.

Art. 19. [14] In all districts composed of only one county, the county judge of such county shall receive the returns and issue the certificates of election to the representatives elected as shown by the highest number of votes cast for any one person, but in the several districts composed of more than one county, 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:

In the third district, Cass county.

In the fifth district, Morris county.

In the thirteenth district, Denton county.
 In the seventeenth district, Hunt county.
 In the nineteenth district, Hopkins county.
 In the twentieth district, Wood county.
 In the twenty-second district, Harrison county.
 In the twenty-fourth district, Smith county.
 In the twenty-fifth district, Upshur county.
 In the twenty-seventh district, Panola county.
 In the thirty-first district, Cherokee county.
 In the thirty-third district, Shelby county.
 In the thirty-fourth district, San Augustine county.
 In the thirty-fifth district, Polk county.
 In the thirty-sixth district, Jefferson county.
 In the thirty-eighth district, Montgomery county.
 In the fortieth district, Brazoria county.
 In the forty-first district, Waller county.
 In the forty-sixth district, Colorado county.
 In the forty-eighth district, Washington county.
 In the forty-ninth district, Burleson county.
 In the fifty-third district, Burnet county.
 In the fifty-fifth district, Brazos county.
 In the fifty-sixth district, Leon county.
 In the fifty-ninth district, Henderson county.
 In the sixty-fourth district, Robertson county.
 In the seventieth district, Ellis county.
 In the seventy-second district, Milam county.
 In the seventy-fourth district, Dallas county.
 In the seventy-sixth district, Hamilton county.
 In the seventy-seventh district, Bosque county.
 In the eightieth district, Parker county.
 In the eighty-first district, Eastland county.
 In the eighty-second district, De Witt county.
 In the eighty-third district, Victoria county.
 In the eighty-fifth district, Cameron county.
 In the eighty-sixth district, Webb county.
 In the eighty-seventh district, Nueces county.
 In the eighty-eighth district, Wilson county.
 In the ninetieth district, Bexar county.
 In the ninety-first district, Uvalde county.
 In the ninety-second district, Kerr county.
 In the ninety-third district, Llano county.
 In the ninety-fourth district, McCulloch county.
 In the ninety-fifth district, Tom Green county.
 In the ninety-sixth district, Val Verde county.
 In the ninety-eighth district, Hays county.
 In the one hundred and second district, Donley county.
 In the one hundred and third district, Wilbarger county.
 In the one hundred and fourth district, Baylor county.
 In the one hundred and fifth district, Jack county.
 In the one hundred and sixth district, Mitchell county.
 In the one hundred and seventh district, Taylor county.
 In the one hundred and eighth district, Brown county.

CONGRESSIONAL DISTRICTS.

Art. 20. [15] Until otherwise provided by law, the state of Texas shall be apportioned into the following congressional districts,

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: Freestone, Leon, Madison, Trinity, Waller, Harris, Grimes, Walker, Chambers and Montgomery.

2. The following counties shall compose the second district, to-wit: Jefferson, Orange, Liberty, Hardin, Newton, Jasper, Polk, Tyler, San Jacinto, Angelina, Nacogdoches, San Augustine, Sabine, Shelby, Panola, Harrison, Anderson, Cherokee and Houston.

3. The following counties shall compose the third district, to-wit: Hunt, Rockwall, Rains, Van Zandt, Wood, Smith, Upshur, Gregg, Rusk and Henderson.

4. The following counties shall compose the fourth district, to-wit: Hopkins, Franklin, Titus, Morris, Camp, Marion, Cass, Bowie, Red River, Lamar and Delta.

5. The following counties shall compose the fifth district, to-wit: Fannin, Collin, Grayson, Cooke, Denton and Montague.

6. The following counties shall compose the sixth district, to-wit: Dallas, Ellis, Navarro, Hill, Bosque, Johnson and Kaufman.

7. The following counties shall compose the seventh district, to-wit: Brazos, Robertson, Limestone, McLennan, Falls, Milam and Bell.

8. The following counties shall compose the eighth district, to-wit: Tarrant, Parker, Erath, Somervell, Mills, Hamilton, Coleman, Brown, Runnels, Hood, Comanche, Coryell and Lampasas.

9. The following counties shall compose the ninth district, to-wit: Burnet, Williamson, Lee, Travis, Burleson, Bastrop, Caldwell, Hays and Washington.

10. The following counties shall compose the tenth district, to-wit: Gonzales, Fayette, Austin, Colorado, Fort Bend, Galveston, Brazoria, Matagorda and Lavaca.

11. The following counties shall compose the eleventh district, to-wit: Wharton, Jackson, Calhoun, Victoria, De Witt, Goliad, Refugio, Bee, Aransas, Karnes, Wilson, Guadalupe, Atascosa, Live Oak, San Patricio, Nueces, Cameron, Hidalgo, Starr, Zapata, Duval, Encinal, Webb, McMullen, La Salle, Dimmit, Zavalla, Frio and Uvalde.

12. The following counties shall compose the twelfth district, to-wit: Crockett, San Saba, Llano, Blanco, Kendall, Bexar, Medina, Kerr, Bandera, Gillespie, Mason, McCulloch, Menard, Kimble, Edwards, Val Verde, Sutton, Schleicher, Tom Green, Irion, Sterling, Coke, Glasscock, Midland, Ector, Crane, Buchel, Pecos, Upton, Brewster, Foley, Presidio, Jeff Davis, Kinney, Maverick, Concho and Comal.

13. The following counties shall compose the thirteenth district, to-wit: Palo Pinto, Stephens, Shackelford, Eastland, Callahan, Taylor, Nolan, El Paso, Reeves, Ward, Loving, Winkler, Andrews, Martin, Gaines, Dawson, Borden, Scurry, Fisher, Jones, Wise, Jack, Young, Throckmorton, Haskell, Stonewall, Kent, Garza, Lynn, Terry, Yoakum, Cochran, Hockley, Lubbock, Crosby, Dickens, King, Knox, Baylor, Archer, Clay, Wichita, Wilbarger, Foard, Hardeman, Cottle, Motley, Floyd, Hale, Lamb, Bailey, Parmer, Castro, Swisher, Briscoe, Hall, Childress, Greer, Collingsworth, Donley, Armstrong, Randall, Deaf Smith, Oldham, Potter, Carson, Gray, Wheeler, Hemp-hill, Roberts, Hutchinson, Moore, Hartley, Dallam, Sherman, Hansford, Ochiltree, Lipscomb, Howard and Mitchell.

SUPREME JUDICIAL DISTRICTS.

Art. 21. [16] The state of Texas shall be and the same is hereby divided into five supreme judicial districts for the purpose of constituting and organizing courts of civil appeals therein respectively.

1. The following counties shall compose the first supreme judicial district: Newton, Jasper, Orange, Jefferson, Hardin, Tyler, Polk, Trinity, Houston, Madison, Walker, San Jacinto, Liberty, Chambers, Harris, Montgomery, Grimes, Washington, Waller, Fort Bend, Brazoria, Matagorda, Wharton, Colorado, Austin, Fayette, Lavaca, Jackson, Calhoun, Victoria, De Witt, Goliad, Refugio, San Patricio, Aransas, Nueces, Hidalgo, Cameron, Sabine, San Augustine, Nacogdoches, Angelina, Anderson, Freestone, Limestone, Brazos, Leon, Burleson, Galveston, Starr, Shelby, Cherokee, Rusk, Gregg, Smith and Panola.

2. The following counties shall compose the second supreme judicial district: Dallam, Sherman, Hansford, Ochiltree, Lipscomb, Hartley, Moore, Hutchinson, Roberts, Hemphill, Oldham, Potter, Carson, Gray, Wheeler, Deaf Smith, Randall, Armstrong, Donley, Collingsworth, Parmer, Castro, Swisher, Briscoe, Hall, Childress, Bailey, Lamb, Hale, Floyd, Motley, Cottle, Foard, Hardeman, Wilbarger, Wichita, Cooke, Montague, Clay, Archer, Baylor, Knox, King, Dickens, Crosby, Lubbock, Hockley, Greer, Ector, Midland, Glasscock, Loving, Winkler, Reeves, Ward, Crane, Upton, Cochran, Yoakum, Terry, Linn, Garza, Kent, Stonewall, Haskell, Throckmorton, Young, Jack, Wise, Denton, Tarrant, Parker, Palo Pinto, Stephens, Shakelford, Jones, Fisher, Scurry, Borden, Dawson, Gaines, Andrews, Martin, Howard, Mitchell, Nolan, Taylor, Callahan, Bosque, Eastland, Erath, Hood, Somervell and Comanche.

3. The following counties shall compose the third supreme judicial district: Sterling, Coke, Runnels, Coleman, Brown, Mills, Hamilton, Coryell, Bell, Lampases, San Saba, McCulloch, Concho, Tom Green, Irion, Llano, Burnet, Williamson, Milam, Lee, Bastrop, Travis, Blanco, Hays, Comal, Caldwell, Robertson, McLennan and Falls.

4. The following counties shall compose the fourth supreme judicial district: El Paso, Jeff Davis, Presidio, Brewster, Buchel, Pecos, Crockett, Val Verde, Schleicher, Sutton, Edwards, Kinney, Maverick, Menard, Kimble, Kerr, Bandera, Uvalde, Zavala, Dimmit, Webb, Encinal, La Salle, Frio, Medina, Duval, McMullen, Atascosa, Bexar, Kendall, Gillespie, Mason, Guadalupe, Wilson, Live Oak, Zapata, Bee, Gonzales and Karnes.

5. The following counties shall compose the fifth supreme judicial district: Grayson, Collin, Dallas, Rockwall, Ellis, Navarro, Kaufman, Henderson, Van Zandt, Rains, Hunt, Fannin, Lamar, Hopkins, Delta, Wood, Red River, Titus, Franklin, Camp, Upshur, Harrison, Marion, Cass, Morris, Bowie, Johnson and Hill.

JUDICIAL DISTRICTS.

Art. 22. 1. The first judicial district shall be composed of the counties of Jasper, Newton, Orange, Jefferson and Tyler, and the district courts therein shall be held as follows: (Acts of 1883, p. 56.)

In the county of Jasper on the first Monday in March and September, and may continue in session three weeks.

In the county of Newton on the third Monday after the first Mon-

day in March and September, and may continue in session three weeks.

In the county of Orange on the sixth Monday after the first Monday in March and September, and may continue in session four weeks.

In the county of Jefferson on the tenth Monday after the first Monday in March and September, and may continue in session four weeks.

In the county of Tyler on the fourteenth Monday after the first Monday in March and September, and may continue in session until the business is disposed of.

(Acts of 1893,
p. 23.)

2. The second judicial district shall be composed of the counties of Angelina, Cherokee, Nacogdoches, Sabine, San Augustine and Shelby, and the terms of the district courts shall be held therein as follows:

In the county of Shelby on the first Monday in January and second Monday in July, and may continue in session five weeks.

In the county of Sabine on the fifth Mondays after the first Monday in January and the second Monday in July, and may continue in session two weeks.

In the county of San Augustine on the seventh Mondays after the first Monday in January and the second Monday in July, and may continue in session three weeks.

In the county of Nacogdoches on the tenth Mondays after the first Monday in January and the second Monday in July, and may continue in session four weeks.

In the county of Angelina on the fourteenth Mondays after the first Monday in January and the second Monday in July, and may continue in session four weeks.

In the county of Cherokee on the eighteenth Mondays after the first Monday in January and the second Monday in July, and may continue in session until the business is disposed of.

(Acts of 1884,
p. 14.)

3. The third judicial district shall be composed of the counties of Henderson, Houston and Anderson, and the district courts shall be held therein as follows:

In the county of Henderson on the first Monday in February and September, and may continue in session four weeks.

In the county of Houston on the fourth Monday after the first Monday in February and September, and may continue in session seven weeks.

In the county of Anderson on the eleventh Monday after the first Monday in February and September, and may continue in session until the business is disposed of.

(Acts of 1887,
p. 24.)

4. The fourth judicial district shall be composed of the counties of Rusk, Harrison and Panola, and the district courts shall be held therein as follows:

In the county of Rusk on the first Monday in January and July, and may continue in session six weeks.

In the county of Harrison on the sixth Monday after the first Monday in January and July, and may continue in session eight weeks.

In the county of Panola on the fourteenth Monday after the first Monday in January and July, and may continue in session until the business is disposed of.

(Acts of 1861,
p. 32.)

5. The fifth judicial district shall be composed of the counties of Bowie, Cass, Marion, Morris, Titus, Franklin and Camp, and the district courts therein shall be held as follows:

In the county of Cass on the first Monday in February and the

fourth Monday in August, and may continue in session four weeks.

In the county of Bowie on the fourth Monday after the first Monday in February and the fourth Monday in August, and may continue in session five weeks.

In the county of Morris on the ninth Monday after the first Monday in February and the fourth Monday in August, and may continue in session two weeks.

In the county of Titus on the eleventh Monday after the first Monday in February and the fourth Monday in August, and may continue in session two weeks.

In the county of Franklin on the thirteenth Monday after the first Monday in February and the fourth Monday in August, and may continue in session two weeks.

In the county of Camp on the fifteenth Monday after the first Monday in February and the fourth Monday in August, and may continue in session three weeks.

In the county of Marion on the eighteenth Monday after the first Monday in February and the fourth Monday in August, and may continue in session four weeks.

6. The sixth judicial district shall be composed of the counties of Fannin, Lamar and Red River, and the district court shall be begun and held in said counties as follows: (Acts of 1895, p. 92.)

In the county of Fannin on the second Monday in February and August, and may continue in session seven weeks.

In the county of Lamar on the seventh Monday after the second Monday in February and August, and may continue in session eight weeks.

In the county of Red River on the fifteenth Monday after the second Monday in February and August, and may continue in session five weeks.

7. The seventh judicial district shall be composed of the counties of Upshur, Gregg, Smith, Van Zandt and Wood, and the district courts therein shall be held as follows: (Acts of 1884, p. 33.)

In the county of Smith on the first Monday of February and September of each year, and may continue in session seven weeks.

In the county of Van Zandt on the seventh Monday after the first Monday in February and September of each year, and may continue in session four weeks. (Acts of 1889, p. 147.)

In the county of Wood on the eleventh Monday after the first Monday in February and September of each year, and may continue in session three weeks.

In the county of Upshur on the first Monday in January and on the seventeenth Monday after the first Monday in February, and may continue in session three weeks.

In the county of Gregg on the fourteenth Monday after the first Monday in September and February, and may continue in session three weeks.

8. The eighth judicial district shall be composed of the counties of Hunt, Hopkins, Delta and Rains, and the district courts shall be held therein as follows: (Acts of 1885, p. 55.)

In the county of Hunt on the first Monday in January and on the second Monday in June, and may continue in session seven weeks.

In the county of Rains on the seventh Monday after the first Monday in January and on the third Monday after the second Monday in September, and may continue in session three weeks. (Acts of 1889, p. 148.)

In the county of Delta on the tenth Monday after the first Monday

in January and on the second Monday in September, and may continue in session three weeks.

In the county of Hopkins on the thirteenth Monday after the first Monday in January and on the sixth Monday after the second Monday in September, and may continue in session six weeks.

(Acts of 1893,
p. 104.)

9. The ninth judicial district shall be composed of the counties of Montgomery, Liberty, Chambers, Hardin, San Jacinto and Polk, and the district courts therein shall be held as follows:

In the county of Montgomery on the second Monday in January and July, and may continue in session four weeks.

In the county of Liberty on the fifth Monday after the second Monday in January and July, and may continue in session four weeks.

In the county of Chambers on the ninth Monday after the second Monday in January and July, and may continue in session two weeks.

In the county of Hardin on the eleventh Monday after the second Monday in January and July, and may continue in session three weeks.

In the county of San Jacinto on the fourteenth Monday after the second Monday in January and July, and may continue in session five weeks.

In the county of Polk on the nineteenth Monday after the second Monday in January and July, and may continue in session until the business is disposed of.

(Acts of 1884,
p. 13.)

10. The county of Galveston shall constitute the tenth judicial district, and the district court shall be begun and held therein as follows: On the first Monday in February, April, June, October and December, and may continue in session until the business is disposed of.

(Acts of 1893,
p. 118.)

11. The county of Harris shall compose the eleventh judicial district, and the terms of the district court shall be begun and holden in said county of Harris on the first Monday in February, April, June, October and December of each and every year, and may continue in session until the business of the court is disposed of.

(Acts of 1889,
p. 149.)

12. The twelfth judicial district shall be composed of the counties of Trinity, Walker, Madison, Leon and Grimes, and the district courts shall be held in said counties as follows:

In the county of Trinity on the first Monday in March and September, and may continue in session three weeks.

In the county of Walker on the third Monday after the first Monday in March and September, and may continue in session three weeks.

In the county of Madison on the sixth Monday after the first Monday in March and September, and may continue in session three weeks.

In the county of Leon on the ninth Monday after the first Monday in March and September, and may continue in session three weeks.

In the county of Grimes on the twelfth Monday after the first Monday in March and September, and may continue in session until the business is disposed of.

(Acts of 1893,
p. 26.)

13. The thirteenth judicial district of the state shall be composed of the counties of Limestone, Freestone and Navarro, and the district courts shall be begun and held therein as follows:

In the county of Limestone on the first Monday in January and on the first Monday in August, and may continue in session five weeks each term.

In the county of Freestone on the fifth Monday after the first Mon-

day in January and on the fifth Monday after the first Monday in August, and may continue in session four weeks each term.

In the county of Navarro on the ninth Monday after the first Monday in January, and may continue in session seven weeks, and on the first Monday in June, and may continue in session seven weeks, and on the ninth Monday after the first Monday in August, and may continue in session six weeks.

14. All that part of Dallas county lying north of the following line, viz.: Beginning at the point on the east boundary line of said county where the same is intersected by the center of the track of the Texas and Pacific railroad; thence in a western direction with the center of the track of said railroad to a point in the city of Dallas where the same is crossed by Jefferson street; thence in a southern direction along the center of said street to a point directly opposite to the center of the court house situated in said city; thence in a western direction directly through the center of said court house to the Trinity river; thence up said river to the point where the same is crossed by said railroad; thence in a western direction with the center of the track of said railroad to the point where the same crosses the western boundary line of said county, shall constitute the fourteenth judicial district, and the district court shall be begun and held therein as follows: On the second Monday in March, May, September and December, and may continue in session until the business is disposed of. (Acts of 1889, p. 152.)

The district courts of the fourteenth and forty-fourth judicial districts shall have concurrent jurisdiction throughout the limits of said Dallas county of all matters civil and criminal of which jurisdiction is given to the district court by the constitution and laws of the state; and the grand and petit juries for said courts respectively shall be selected and drawn from the body of the county; provided, that the judge of the fourteenth judicial district shall cause a grand jury to be drawn for and organized at the March and September terms of said court, and the judge of the forty-fourth judicial district shall cause a grand jury to be drawn for and organized at the January and June terms of said court; provided further, that either of said judges may in his discretion have a grand jury drawn for and organized at any other time or terms of this court. Ib.

All cases, prosecutions and proceedings filed with the clerk shall by him be entered upon the dockets of said courts alternately, so that the business may be equally distributed between said courts; provided, either of said judges may in his discretion transfer any case or cases pending in his court to the other district court herein provided for by order or orders entered upon the minutes of his court, and where such transfer or transfers are made the clerk of the district court of Dallas county shall enter such case or cases upon the docket of the court to which the transfer is made. Ib.

If any election precinct in Dallas county, or ward in any incorporated city or town therein, shall be situated in part in each of the districts created, then each voter thereof shall vote for the district judge only of the district in which such voter resides. Ib.

15. The fifteenth judicial district of the state of Texas shall be composed of the county of Grayson, and the district court shall be held therein as follows: A term beginning on the first Monday in September of each year, and may continue in session until and including the last Saturday in December. A term beginning on the first Monday in January of each year, and may continue until and including the last Saturday in March of each year; provided, there (Act of 1895, p. 21.)

shall be no grand jury selected and empaneled for said January terms of said court. A term beginning on the first Monday in April of each year, and may continue until the business is disposed of.

(Acts of 1889,
p. 154.)

16. The sixteenth judicial district shall be composed of the counties of Denton, Montague and Cooke, and the district courts shall be held therein as follows:

In the county of Montague on the second Monday in January and July, and may continue in session six weeks.

In the county of Denton on the sixth Monday after the second Monday in January and July, and may continue in session eight weeks.

In the county of Cooke on the sixteenth Monday after the first Monday in January and second Monday in July, and may continue in session until the business is disposed of.

(Acts of 1891,
p. 2.)

17. All that part of Tarrant county lying south and west of the following line, viz.: Beginning at the center of Trinity river at the point where said river leaves Tarrant county on its east boundary and enters Dallas county on its west boundary; thence in a westerly direction with the middle line of said river to the point where said river is crossed by the eastern boundary of the M. A. Jackson survey, the same being the western boundary of the James Sanderson survey; thence south with the east line of said Jackson and west line of said Sanderson surveys to the center of the track of the Texas and Pacific railway; thence westward with the center of said railway track to the point where it intersects the center of Main street in the city of Fort Worth; thence northerly with the center of Main street to the center of the court house; thence north thirty degrees west to the intersection of the north boundary line of the A. Gouhenaut survey; thence west with the north line of said Gouhenaut survey to its northwest corner; thence south to the center of Trinity river; thence westward with the center of said river to Silver Creek; thence westward with the center of Silver creek to the west boundary of Tarrant county, shall constitute the seventeenth judicial district, and the district court shall be begun and held therein as follows: On the second Monday in January, April and September, and may continue in session until the business is disposed of.

1b.

The district courts of the seventeenth and forty-eighth judicial districts shall have concurrent jurisdiction throughout the limits of Tarrant county of all matters civil and criminal of which jurisdiction is given to the district court by the constitution and laws of the state; and grand and petit juries for said courts respectively shall be selected and drawn from the body of the county.

1b.

The clerk of the district court of Tarrant county shall make up a civil docket and a criminal docket for each of said courts. All cases, prosecutions and proceedings filed with the clerk shall by him be entered upon the dockets of said courts alternately, so that the business may be equally distributed between said courts; provided, that the reference above to a civil docket in the singular number shall be taken to embrace the various civil dockets required by law to be used and kept by the clerk of the district court of Tarrant county when this law shall take effect, so as to make it incumbent upon said clerk, in dividing the civil business between said courts, as herein before required, to open for each court the number and kind of dockets heretofore kept by him and to enter upon each the cases belonging to the same; provided, that all garnishment cases shall follow the cases in which they are sued out, and that such garnishment cases shall not be estimated by the clerk in dividing business. In all injunctions granted by either of said judges, the suits wherein granted

shall be docketed in the court of the judge who granted such injunctions, and in all cases wherein receivers may be appointed by either of said judges, the suit wherein such receivers shall be appointed shall be docketed in the court of the judge who appointed such receivers. Either of said judges may in his discretion transfer any case or cases, civil or criminal, pending in his court to the district court in said county other than that of which he is judge, by order or orders entered upon the minutes of the court; and it shall be the duty of each of said judges to transfer to the court other than that of which he is judge all cases which he is disqualified to try, unless the judge of such other district is also disqualified to try such cases, in which event such cases shall remain where docketed by the clerk, and a special judge to try the same shall be chosen by the attorneys or appointed by the governor under the laws of the state governing the matter; and where such transfers are made the clerk of the district court of Tarrant county shall enter such case or cases upon the appropriate docket of the court to which such transfer shall be made.

In causes filed in said county cognizable by the district court it shall be sufficient for the petition to state the court in which suit is filed as "The district court of Tarrant county," and it shall be sufficient to address the petition to "The district court of Tarrant county." (Acts of 1891,
p. 2.)

In case of a vacancy by death, resignation or the removal of the clerk of the district court of Tarrant county, his successor shall be appointed by the judge of the district in which said clerk, by the laws of the state, was entitled to vote.

If any election precinct as now or may be hereafter constituted in Tarrant county or any ward as now or as may be hereafter constituted in any incorporated city or town, now existing or hereafter to be formed in said county, shall be situated partly in each of said districts, then each voter thereof shall vote for the district judge only of the district in which such voter resides. 1b.

18. The eighteenth judicial district shall be composed of the counties of Johnson, Hill and Bosque, and the district courts therein shall be held as follows: (Acts of 1887,
p. 129.)

In the county of Bosque on the third Monday in January and August, and may continue in session six weeks.

In the county of Hill on the sixth Monday after the third Monday in January and August, and may continue in session seven weeks.

In the county of Johnson on the thirteenth Monday after the third Monday in January and August, and may continue in session until the business is disposed of; provided, that said continuation shall not interfere with the terms of the court in the remaining counties of the district as herein above provided for.

19. The nineteenth judicial district shall be composed of the county of McLennan, and the district court shall be held therein as follows: On the first Monday in January, April, July and October in each year, and may continue in session until the business is disposed of; provided, the October term shall not continue longer than the last Saturday before the twenty-fifth day of December. (Acts of 1893,
p. 52.)

20. The twentieth judicial district shall be composed of the counties of Milam, Robertson and Brazos, and the district courts shall be held therein as follows: 1b.

In the county of Robertson on the first Monday in January and second Monday in June, and may continue in session eight weeks.

In the county of Brazos on the first Monday in March and September, and may continue in session six weeks.

In the county of Milam on the third Monday in April and October, and may continue in session seven weeks.

(Acts of 1892,
p. 2.)

21. The counties of Washington, Burleson, Lee and Bastrop shall constitute the twenty-first judicial district, and the district courts therein shall be held as follows:

In the county of Washington on the first Monday in March and September, and may continue in session six weeks.

In the county of Lee on the seventh Monday after the first Monday in March and September, and may continue in session three weeks.

In the county of Burleson on the tenth Monday after the first Monday in March and September, and may continue in session five weeks.

In the county of Bastrop on the fifteenth Monday after the first Monday in March and September, and may continue in session six weeks.

(Acts of 1895,
p. 83.)

22. The twenty-second judicial district shall be composed of the counties of Austin, Fayette, Caldwell and Hays, and the district courts shall be held therein as follows:

In the county of Hays on the first Monday in March and September of each year, and may continue in session four weeks.

In the county of Caldwell on the first Monday in April and October of each year, and may continue in session five weeks.

In the county of Fayette on the tenth Monday after the first Monday in March and September, and may continue in session six weeks.

In the county of Austin on the seventeenth Monday after the first Monday in March and September, and may continue in session four weeks.

(Act of 1895,
p. 105.)

23. The twenty-third judicial district of Texas shall be composed of the counties of Brazoria, Fort Bend, Jackson, Matagorda, Waller and Wharton, and the terms of the district court to be held therein shall be held as follows, viz.:

In the county of Waller on the second Monday in February and the first Monday in August of each year, and may continue in session three weeks.

In the county of Fort Bend on the third Monday after the first Monday in March and September of each year, and may continue in session four weeks.

In the county of Wharton on the seventh Monday after the first Monday in March and September of each year, and may continue in session three weeks.

In the county of Jackson on the tenth Monday after the first Monday in March and September of each year, and may continue in session two weeks.

In the county of Matagorda on the thirteenth Monday after the first Monday in March and September of each year, and may continue in session two weeks.

In the county of Brazoria on the first Monday in January, and may continue in session five weeks, and on the fifteenth Monday after the first Monday in March, and may continue in session until the last Saturday in July.

(Act of 1895,
p. 82.)

24. The twenty-fourth judicial district shall be composed of the counties of Refugio, Bee, Karnes, Goliad, Calhoun, Victoria and De Witt, and the terms of the district court therein shall be held each year as follows:

In the county of Refugio on the second Monday of February and on the first Monday of September, and may continue in session one week.

In the county of Bee on the first Monday after the second Monday

in February and the first Monday in September, and may continue in session three weeks.

In the county of Karnes on the fourth Monday after the second Monday in February and the first Monday in September, and may continue in session three weeks.

In the county of Goliad on the seventh Monday after the second Monday in February and the first Monday in September, and may continue in session three weeks.

In the county of Calhoun on the tenth Monday after the second Monday in February and the first Monday in September, and may continue in session one week.

In the county of Victoria on the eleventh Monday after the second Monday in February and the first Monday in September, and may continue in session four weeks.

In the county of De Witt on the fifteenth Monday after the second Monday in February and the first Monday in September, and may continue in session until the business is disposed of.

25. The twenty-fifth judicial district shall be composed of the counties of Lavaca, Gonzales, Guadalupe, Wilson and Colorado, and the district courts shall be held therein as follows: (Acts of 1883, p. 61.)

In the county of Lavaca on the first Monday in February and August of each year, and may continue in session four weeks.

In Colorado county on the first Monday in March and September of each year, and may continue in session six weeks. (Acts of 1889, p. 156.)

In Guadalupe county on the first Monday in May and November of each year, and may continue in session four weeks.

In Wilson county on the first Monday in June and December of each year, and may continue in session four weeks.

In Gonzales County on the first Monday in January and July of each year, and may continue in session four weeks.

26. The twenty-sixth judicial district shall be composed of the counties of Williamson and Travis, and the terms of the district court shall be held therein hereafter as follows: (Acts of 1891, p. 89.)

In the county of Williamson on the first Monday in January and July of each year, and may continue in session six weeks.

In the county of Travis on the first Monday in March of each year, and may continue in session until the last Saturday before the first Monday in May.

On the first Monday of May of each year, and may continue in session until the last Saturday in June.

On the first Monday in October of each year, and may continue in session until the last Saturday before the twenty-fifth day of December; provided, that a grand jury for Travis county shall not be drawn except for the May and October terms of said court, unless the district judge should deem it necessary to call a grand jury at other terms and should so order.

The two district courts in Travis county shall have concurrent jurisdiction with each other throughout the limits of Travis county of all matters civil and criminal of which jurisdiction is given to the district court by the constitution and the laws of the state of Texas; provided, that the district judge of the fifty-third judicial district shall not order drawn or selected a grand jury unless in his judgment he thinks it necessary. Ib.

The clerk of the district court of Travis county as heretofore constituted, and his successors in office, shall be the clerk of both of the district courts in Travis county, and shall perform all the duties pertaining to both of said courts. Ib.

Ib. Either of the judges of said district courts in Travis county may in their discretion transfer any cause or causes, civil or criminal, that may at any time be pending in his court to the other district court in Travis county by order or orders entered upon the minutes of his court, and where such transfer or transfers are made the clerk of the district court of Travis county shall enter such cause or causes upon the docket of the court to which such transfer or transfers are made, and when so entered upon the docket, the judge of said court shall try and dispose of said causes in the same manner as if such causes were originally instituted in said court.

Ib. No petit juries shall be drawn for the March, April and November terms of said courts respectively in Travis county, unless the respective judges of said courts shall deem the same necessary.

(Acts of 1893,
p. 103.)

Whenever, in the opinion of the judge of the twenty-sixth judicial district, there shall be a sufficient number of civil cases pending in the district court of any county in said district, in excess of what can be disposed of at the regular terms of said court, to justify the holding of a special term of said court to try pending civil cases, the judge of said district shall have power to order and hold, from time to time, special terms in said county for the trial of such pending civil cases alone. By pending civil cases is meant all civil cases the service in which was so perfected at the last regular term preceding a special term that the same might have been lawfully tried at said regular term, as well as other civil cases brought before such special term begins, or while it may be in session, in which an agreement to try the same at such special term may be made by all the parties thereto.

Ib. In order to call a special term of the district court in any county in said district, the judge of said district shall, either in term time or vacation, make and file with the clerk of the district court of such county, an order, to be entered in the minutes of said court, ordering a special term of said court, stating the time when the same shall commence, and during what time said term will be held, and the time during such term when the nonjury civil cases and jury civil cases will be respectively given precedence in the trial of causes at said special term.

Ib. The clerk of such court, on the receipt of such order, shall immediately enter the same at large upon the minutes of said court, and shall make and place in the hands of the sheriff of said county eight certified copies of said order as the same appears of record in the minutes of said court. Whereupon, the sheriff of said county shall give notice of such order by posting a copy of the same in six public places in said county, one of which shall be at the court house door of such county, for not less than twenty days prior to the time fixed in said order for the commencement of said special term, and shall cause one of said copies to be printed once a week for three weeks in some newspaper in said county prior to the commencement of said special term, if there be a newspaper printed in said county, as often as once a week for three weeks prior to the time fixed by said order for the commencement of said special term, and said sheriff shall endorse on the eighth copy his return, showing how he has complied with this law in giving notice of such order, and file the same with the clerk of said court by nine o'clock a. m. on the day on which said special term is to begin, and said copy and the return thereon shall be entered at large upon the minutes of said court. The minutes of such order and the preliminary proceedings prior to the opening of

such special term shall be evidence of the ordering of such special term, and of the notice given thereof.

So many of the jurors selected by the commissioners for the next regular term to be held after a special term is ordered as may be required for such special term, shall be summoned as jurors for such special term, and the clerk of the court, on receiving the order for a special term, shall open the jury list of jurors selected for such next regular term, taking them in the numerical order of the number of the weeks of the next regular term for which they were selected, until he shall have opened as many lists as there shall be weeks of the special term during which jurors will be required, as shown by the order of the judge; and the clerk and the sheriff shall further proceed to obtain the attendance of such jurors as is required by law to obtain the attendance of the jurors at regular terms after jury lists are opened. Each list shall be summoned for a different week from that for which any other list shall be summoned.

During a special term, jury commissioners shall be appointed, and jurors shall be selected to take the place, in the next regular term, of such jurors selected for the next regular term as may have been required for the special term.

27. The twenty-seventh judicial district shall be composed of the counties of Mills, Bell, Lampasas and Burnet, and the district courts shall be held therein as follows:

In the county of Mills on the second Monday in March and September of each year, and may continue in session three weeks.

In the county of Burnet on the first Monday in April and October of each year, and may continue in session four weeks. (Acts of 1893, p. 158.)

In the county of Lampasas on the first Monday in May and November of each year, and may continue in session four weeks.

In the county of Bell on the first Monday in July and January of each year, and may continue in session until the business is disposed of.

28. The twenty-eighth judicial district of the state of Texas shall be composed of the counties of Cameron, Hidalgo, Starr and Nueces, and the district courts shall be held therein as follows: (Acts of 1891, p. 42.)

In the county of Cameron on the first Monday in February and September, and may continue in session four weeks.

In the county of Hidalgo on the fourth Monday after the first Monday in February and September, and may continue in session two weeks.

In the county of Starr on the sixth Monday after the first Monday in February and September, and may continue in session three weeks.

In the county of Nueces on the ninth Monday after the first Monday in February and September, and may continue in session six weeks.

29. The twenty-ninth judicial district shall be composed of the counties of Palo Pinto, Hood, Somervell, Erath, Hamilton and Coryell, and the terms of the district courts shall be held therein each year as follows: (Acts of 1895, p. 104.)

In the county of Coryell on the third Monday in January and July, and may continue in session five weeks.

In the county of Palo Pinto on the first Monday in March and September, and may continue in session three weeks.

In the county of Hood on the fourth Monday in March and September, and may continue in session three weeks.

In the county of Somervell on the sixth Monday after the first

Monday in March and September, and may continue in session two weeks.

In the county of Erath on the eighth Monday after the first Monday in March and September, and may continue in session five weeks.

In the county of Hamilton on the thirteenth Monday after the first Monday in March and September, and may continue in session four weeks.

(Acts of 1881,
p. 45.)

30. The thirtieth judicial district shall be composed of the counties of Young, Archer, Clay and Wichita, and terms of the district court shall be held therein each year as follows:

In the county of Young on the fifth Monday after the first Monday in January and July, and may continue in session three weeks.

In the county of Archer on the eighth Monday after the first Monday in January and July, and may continue in session two weeks.

In the county of Clay on the tenth Monday after the first Monday in January and July, and may continue in session six weeks.

In the county of Wichita on the sixteenth Monday after the first Monday in January and July, and may continue in session until the business is disposed of.

(Acts of 1889,
p. 161.)

31. The thirty-first judicial district shall be composed of the counties of Wheeler, Hemphill, Lipscomb, Carson and Roberts, and the unorganized counties of Gray, Ochiltree, Hansford and Hutchinson, and the terms of the district court shall be held therein each year as follows:

In the county of Wheeler on the first Monday in April and October, and may continue in session two weeks.

In the county of Carson on the second Monday after the first Monday in April and October, and may continue in session two weeks.

In the county of Roberts on the fourth Monday after the first Monday in April and October, and may continue in session two weeks.

In the county of Hemphill on the sixth Monday after the first Monday in April and October, and may continue in session two weeks.

In the county of Lipscomb on the eighth Monday after the first Monday in April and October, and may continue in session two weeks.

(Act of 1895,
p. 143.)

The unorganized counties of Ochiltree and Hansford are hereby attached to the county of Lipscomb for judicial purposes.

The unorganized county of Gray is hereby attached to the county of Roberts for judicial purposes.

The unorganized county of Hutchinson is hereby attached to Roberts county for judicial purposes.

(Acts of 1893,
p. 166.)

32. The thirty-second judicial district shall be composed of the counties of Nolan, Mitchell, Howard, Martin, Midland, Borden and Ector, and the unorganized counties of Andrews, Gaines, Dawson, Terry, Yoakum, Glassecock, Crane, Upton, Garza and Lynn, and the terms of the district court therein shall be held each year as follows:

In the county of Midland on the first Mondays in February and September in each year, and may continue in session two weeks.

In the county of Martin on the third Mondays in February and September in each year, and may continue in session two weeks.

In the county of Howard on the fourth Monday after the first Mondays in February and September in each year, and may continue in session two weeks.

In the county of Nolan on the ninth Mondays after the first Mondays in February and September, and may continue in session two weeks.

In the county of Mitchell on the fifteenth Mondays after the first Mondays in February and September, and may continue in session until all business is disposed of.

In the county of Ector on the thirteenth Mondays after the first Mondays in February and September in each year, and may continue in session two weeks.

In the county of Borden on the seventh Mondays after the first Mondays in February and September in each year, and may continue in session two weeks.

In the county of Glasscock, when organized, on the sixth Mondays after the first Mondays in February and September in each year, and may continue in session one week.

The unorganized counties of Gaines, Terry, Yoakum and Andrews are hereby attached to the county of Martin for judicial purposes.

The unorganized counties of Dawson and Glasscock are hereby attached to the county of Howard for judicial purposes.

The unorganized counties of Crane and Upton are hereby attached to Midland county for judicial purposes.

The unorganized county of Garza is hereby attached to the county of Borden for judicial purposes.

33. The thirty-third judicial district shall be composed of the counties of Blanco, Gillespie, Mason, Kimble, Menard, San Saba and Llano, and the terms of the district court shall be held therein each year as follows: (Acts of 1893, p. 154.)

In the county of Blanco on the first Mondays in February and September, and may continue in session two weeks.

In the county of Gillespie on the third Mondays in February and September, and may continue in session two weeks.

In the county of Mason on the fourth Mondays after the first Mondays in February and September, and may continue in session three weeks.

In the county of Kimble on the seventh Mondays after the first Mondays in February and September, and may continue in session two weeks.

In the county of Menard on the ninth Mondays after the first Mondays in February and September, and may continue in session two weeks.

In the county of San Saba on the eleventh Mondays after the first Mondays in February and September, and may continue in session three weeks.

In the county of Llano on the fourteenth Mondays after the first Mondays in February and September, and may continue in session until the business is disposed of.

The unorganized county of Schleicher shall be attached to the county of Menard for judicial purposes.

34. The thirty-fourth judicial district shall be composed of the counties of El Paso, Reeves, Presidio and Ward, and the unorganized counties of Loving and Winkler. The district court shall be begun and held in said counties as follows: (Acts of 1893, p. 13.)

In the county of Ward on the last Monday in February and August of each year, and may continue one week.

In the county of Reeves on the first Monday in March and September of each year, and may continue in session two weeks.

In the county of Presidio on the second Monday after the first Monday in March and September, and may continue in session two weeks.

In the county of El Paso there shall be begun and held three terms of the district court during each year, as follows:

On the first Monday in January, and may continue in session until the last Monday in February.

On the fourth Monday after the first Monday in March, and may continue in session until the first day of July.

On the fourth Monday after the first Monday in September and may continue in session until the first Monday in January following.

(Acts of 1891,
p. 27.)

35. The thirty-fifth judicial district of this state shall be composed of the counties of Coleman, Runnels, Concho, McCulloch and Brown, and the district courts shall be held therein each year as follows, to-wit:

In the county of Coleman on the first Monday in February and September, and may continue in session four weeks.

In the county of Runnels on the fifth Monday after the first Monday in February and September, and may continue in session three weeks.

In the county of Concho on the eighth Monday after the first Monday in February and September, and may continue in session three weeks.

In the county of McCulloch on the eleventh Monday after the first Monday in February and September, and may continue in session two weeks.

In the county of Brown on the thirteenth Monday after the first Monday in February and September, and may continue in session until the business is disposed of.

(Acts of 1895,
p. 82.)

36. The thirty-sixth judicial district shall be composed of the counties of Aransas, San Patricio, Live Oak, McMullen, La Salle, Dimmit, Zavalla, Frio and Atascosa, and the terms of the district courts shall be held therein as follows:

In the county of Aransas on the second Mondays in February and August, and may continue in session two weeks.

In the county of San Patricio on the fourth Mondays in February and August, and may continue in session two weeks.

In the county of Live Oak on the second Mondays in March and September, and may continue in session two weeks.

In the county of McMullen on the third Mondays after the first Mondays in March and September, and may continue in session one week.

In the county of Atascosa on the fourth Mondays after the first Mondays in March and September, and may continue in session three weeks.

In the county of Frio on the seventh Mondays after the first Mondays in March and September, and may continue in session two weeks.

In the county of La Salle on the ninth Mondays after the first Mondays in March and September, and may continue in session two weeks.

In the county of Zavala on the eleventh Mondays after the first Mondays in March and September, and may continue in session one week.

In the county of Dimmit on the twelfth Mondays after the first Mondays in March and September, and may continue one week.

(Acts of 1895,
p. 181.)

37. The county of Bexar shall constitute the thirty-seventh judicial district and the forty-fifth judicial district, and the jurisdiction of the district courts in and for said thirty-seventh and said

forty-fifth judicial districts shall be concurrent, and shall extend with the limits of said Bexar county.

The district court of the thirty-seventh judicial district shall hold five terms; one beginning on the first Monday in October, and may continue in session four weeks. One term beginning on the first Monday in November, and may continue in session eight weeks. One term beginning on the first Monday in January, and may continue in session eight weeks. One term beginning on the first Monday in March, and may continue in session eight weeks. One term beginning on the first Monday in May, and may continue in session eight weeks. The district court of the forty-fifth judicial district shall hold five terms; one beginning on the first Monday in October, and may continue in session eight weeks. One beginning on the first Monday in December, and may continue in session eight weeks. One term beginning on the first Monday in February, and may continue in session eight weeks. One term beginning on the first Monday in April, and may continue in session eight weeks. One term beginning on the first Monday in June, and may continue in session four weeks.

All writs and process heretofore issued or that may hereafter be issued up to the time this law shall take effect by and from said district courts, and made returnable to the terms of said courts as now fixed by law, shall be returnable to the next ensuing terms of said courts as fixed by this law, and all such writs and process shall be valid and legal.

The judge of the district court of the thirty-seventh judicial district, as heretofore existing, shall be and remain the judge of the district court of the thirty-seventh judicial district as provided for in this law until the expiration of his term of office, and until his successor shall have been elected and qualified. And the judge of the district court of the forty-fifth judicial district as heretofore existing shall be and remain the judge of the district court of the forty-fifth judicial district as provided for in this law until the expiration of his term of office, and until his successor shall have been elected and qualified. And hereafter the judge of each of said courts shall be elected by the qualified voters of said Bexar county. The judges of said courts may, in their discretion, transfer any suit or cause of action, civil or criminal, from one district court to another.

The district attorney of the thirty-seventh judicial district shall be and remain the district attorney of the thirty-seventh judicial district as herein defined, and shall also represent the state in all cases, criminal and civil, in the forty-fifth district, and shall be elected by the qualified voters of said thirty-seventh judicial district.

38. The thirty-eighth judicial district shall be composed of the counties of Bandera, Comal, Kendall, Kerr, Medina and Uvalde, and the district courts shall be held as follows: (Acts of 1895,
p. 77.)

In the county of Bandera on the fifth Monday after the first Mondays in March and September, and may continue in session two weeks.

In the county of Kendall on the seventh Monday after the first Mondays in March and September, and may continue in session two weeks.

In the county of Kerr on the ninth Monday after the first Mondays in March and September, and may continue in session three weeks.

In the county of Comal on the twelfth Monday after the first Mondays in March and September, and may continue in session three weeks.

In the county of Medina on the fifteenth Monday after the first Mondays in March and September, and may continue in session four weeks.

In the county of Uvalde on the nineteenth Monday after the first Mondays in March and September, and may continue in session until the business is disposed of.

(Acts of 1895,
p. 93.)

39. The thirty-ninth judicial district of the state of Texas shall be composed of the following counties, to-wit: Jones, Fisher, Scurry, Kent, Stonewall, Haskell and Throckmorton, and the terms of the district court therein shall be held each year as follows:

In the county of Jones on the first Mondays in February and August, and may continue in session for five weeks.

In the county of Fisher on the fifth Mondays after the first Mondays in February and August, and may continue in session two weeks.

In the county of Scurry on the seventh Mondays after the first Mondays in February and August, and may continue in session two weeks.

In the county of Kent on the ninth Mondays after the first Mondays in February and August, and may continue in session two weeks.

In the county of Stonewall on the eleventh Mondays after the first Mondays in February and August, and may continue in session three weeks.

In the county of Throckmorton on the fourteenth Mondays after the first Mondays in February and August, and may continue in session two weeks.

In the county of Haskell on the sixteenth Mondays after the first Mondays in February and August, and may continue in session four weeks.

40. The fortieth judicial district shall be composed of the counties of Ellis, Rockwall and Kaufman, and the district courts shall be held therein as follows:

In the county of Ellis on the first Monday in March and September, and may continue in session eight weeks.

In the county of Rockwall on the first Monday in May and November, and may continue in session three weeks.

In the county of Kaufman on the fourth Monday in May and November, and may continue in session seven weeks.

(Acts of 1895,
p. 107.)

41. The forty-first judicial district shall be composed of the counties of Brewster, Buchel, Foley, Pecos, Val Verde, Kinney, Edwards, Jeff Davis and Maverick, and the district courts shall be held therein as follows:

Beginning in Jeff Davis county on the first Mondays in February and August, and continue in session two weeks.

In Brewster county on the second Mondays after the first Mondays in February and August, and continue two weeks.

In Pecos county on the fourth Mondays after the first Mondays in February and August, and continue one week.

In Val Verde county on the fifth Mondays after the first Mondays in February and August, and continue two weeks.

In Kinney county on the seventh Mondays after the first Mondays in February and August, and continue two weeks.

In Edwards county on the ninth Mondays after the first Mondays in February and August, and continue two weeks.

In Maverick county on the eleventh Mondays after the first Mondays in February and August, and continue until the business is all disposed of.

42. The forty-second judicial district of the state of Texas shall be composed of the counties of Comanche, Eastland, Stephens, Shackelford, Callahan and Taylor, and the terms of the district court shall be held annually therein as follows: (Acts of 1891, p. 22.)

In the county of Comanche on the first Monday in February and on the third Monday in August, and may continue in session four weeks.

In the county of Taylor on the fourth Monday after the first Monday in February, and the sixth Monday after the first Monday in August, and may continue in session five weeks.

In the county of Callahan on the ninth Monday after the first Monday in February, and on the eleventh Monday after the first Monday in August, and may continue in session three weeks.

In the county of Shackelford on the twelfth Monday after the first Monday in February, and on the fourteenth Monday after the first Monday in August, and may continue in session two weeks.

In the county of Stephens on the fourteenth Monday after the first Monday in February, and on the sixteenth Monday after the first Monday in August, and may continue in session three weeks.

In the county of Eastland on the seventeenth Monday after the first Monday in February, and on the nineteenth Monday after the first Monday in August, and may continue in session until the business is disposed of.

43. The counties of Parker, Wise and Jack shall constitute the forty-third judicial district, and court shall be begun and holden therein as follows: (Acts of 1887, p. 68.)

In the county of Parker on the second Monday in May and November of each year, and may continue in session eight weeks.

In the county of Jack on the eighth Monday after the second Monday in May and November of each year, and may continue in session four weeks.

In the county of Wise on the twelfth Monday after the second Monday in May and November of each year, and may continue in session six weeks.

44. The forty-fourth judicial district is composed of all that part of Dallas county not included in the lines composing the boundary of the fourteenth judicial district as set out in subdivision 14 of this article, to which reference is made for defining the territory composing this district. The district courts of this district shall be held on the first Monday in January, April, June and October, and may continue in session until the business is disposed of. (Acts of 1891, p. 152.)

[For special provisions relating to this district and the fourteenth district, see subdivision 14 of this article.]

45. The county of Bexar shall constitute the forty-fifth judicial district and the thirty-seventh judicial district, and the jurisdiction of the district courts in and for said thirty-seventh and said forty-fifth judicial districts shall be concurrent, and shall extend with the limits of said Bexar county. (Acts of 1895, p. 181.)

The district court of the forty-fifth judicial district shall hold five terms; one beginning on the first Monday in October, and may continue in session eight weeks. One beginning on the first Monday in December, and may continue in session eight weeks. One term beginning on the first Monday in February, and may continue in session eight weeks. One term beginning on the first Monday in April, and may continue in session eight weeks. One term beginning on the first Monday in June, and may continue in session four weeks.

[For special provisions relating to this and the thirty-seventh district see subdivision 37 of this article.]

(Act of 1895,
p. 34.)

46. The district court shall be held in the counties composing the forty-sixth judicial district each year as follows:

In the county of Wilbarger, on the first Mondays in February and August, and may continue in session six weeks.

In the county of Greer, on the sixth Mondays after the first Mondays in February and August, and may continue in session two weeks.

In the county of Collingsworth on the eighth Mondays after the first Mondays in February and August, and may continue in session two weeks.

In the county of Hardeman on the tenth Mondays after the first Mondays in February and August, and may continue in session three weeks.

In the county of Childress on the thirteenth Mondays after the first Mondays in February and August, and may continue in session two weeks.

In the county of Hall on the fifteenth Mondays after the first Mondays in February and August, and may continue in session two weeks.

In the county of Foard on the seventeenth Mondays after the first Mondays in February and August, and may continue in session until the business of said court is disposed of.

(Acts of 1893,
p. 40.)

47. The district court shall be held in the counties composing the forty-seventh judicial district each year as follows:

In the county of Donley on the first Mondays in February and August, and may continue in session three weeks.

In the county of Armstrong on the third Mondays after the first Mondays in February and August, and may continue in session two weeks.

In the county of Briscoe on the fifth Mondays after the first Mondays in February and August, and may continue in session one week.

In the county of Swisher on the sixth Monday after the first Mondays in February and August, and may continue in session two weeks.

In the county of Castro on the eighth Mondays after the first Mondays in February and August, and may continue in session one week.

In the county of Deaf Smith on the ninth Mondays after the first Mondays in February and August, and may continue in session one week.

In the county of Randall on the tenth Mondays after the first Mondays in February and August, and may continue in session two weeks.

In the county of Oldham on the twelfth Mondays after the first Mondays in February and August, and may continue in session one week.

In the county of Hartley on the thirteenth Mondays after the first Mondays in February and August, and may continue in session two weeks.

In the county of Dallam on the fifteenth Mondays after the first Mondays in February and August, and may continue in session one week.

In the county of Sherman on the sixteenth Mondays after the first Mondays in February and August, and may continue in session one week.

In the county of Moore on the seventeenth Mondays after the first

Mondays in February and August, and may continue in session one week.

In the county of Potter on the eighteenth Mondays after the first Mondays in February and August, and may continue in session six weeks.

48. The forty-eighth judicial district shall be composed of all that part of Tarrant county not embraced within the boundaries of the seventeenth judicial district as described in subdivision 17 of this article, and the district court shall be begun and held therein as follows: (Acts of 1891, p. 2.)

On the second Monday in February, May and October, and may continue in session until the business is disposed of.

[For special provisions relating to this and the seventeenth judicial district, see subdivision 17 of this article.]

49. The forty-ninth judicial district shall be composed of the counties of Duval, Encinal, Webb and Zapata, and the district courts shall be held therein as follows: (Acts of 1893, p. 17.)

In the county of Webb on the first Monday in October, and may continue in session six weeks; on the first Monday in January, and may continue in session eight weeks, and on the first Monday in May, and may continue in session ten weeks.

In the county of Duval on the fifth Monday before the first Monday in May, and may continue in session three weeks; and on the sixth Monday after the first Monday in October, and may continue in session three weeks.

In the county of Zapata on the second Monday before the first Monday in May, and may continue in session two weeks; and on the ninth Monday after the first Monday in October, and may continue in session two weeks.

The unorganized county of Encinal is hereby attached to the county of Webb for judicial purposes. (Acts of 1891, p. 42.)

50. The fiftieth judicial district shall be composed of the counties of Baylor, Knox, King, Dickens, Crosby, Lubbock, Hale, Floyd, Motley and Cottle, and the unorganized counties of Cochran, Lynn and Hockley, and the terms of the district courts shall be held therein as follows: (Acts of 1893, p. 67.)

In the county of Cottle on the first Mondays in February and August, and may continue in session one week.

In the county of Motley on the first Mondays after the first Mondays in February and August, and may continue in session two weeks.

In the county of Floyd on the third Mondays after the first Mondays in February and August, and may continue in session two weeks.

In the county of Hale on the fifth Mondays after the first Mondays in February and August, and may continue in session two weeks.

In the county of Lubbock on the seventh Mondays after the first Mondays in February and August, and may continue in session two weeks.

In the county of Crosby on the ninth Mondays after the first Mondays in February and August, and may continue in session one week.

In the county of Dickens on the tenth Mondays after the first Mondays in February and August, and may continue in session one week.

In the county of King on the eleventh Mondays after the first Mondays in February and August, and may continue in session one week.

In the county of Knox on the twelfth Mondays after the first Mon-

days in February and August, and may continue in session four weeks.

In the county of Baylor on the sixteenth Mondays after the first Mondays in February and August, and may continue in session six weeks.

The unorganized counties of Cochran, Lynn and Hockley are hereby attached to the county of Lubbock for judicial purposes.

(Acts of 1893,
p. 154.)

51. The fifty-first judicial district of this state shall be composed of the following counties: Crockett, Sutton, Schleicher (when organized), Irion, Coke, Sterling and Tom Green, and the terms of the district court shall be holden therein each year as follows:

In the county of Crockett on the first Mondays of September and February, and may continue in session two weeks.

In the county of Sutton on the third Mondays in September and February, and may continue in session two weeks.

In the county of Schleicher, when organized, on the fifth Mondays after the first Mondays in September and February, and may continue in session two weeks.

In the county of Irion on the seventh Mondays after the first Mondays in September and February, and may continue in session two weeks.

In the county of Coke on the ninth Mondays after the first Mondays in September and February, and may continue in session three weeks.

In the county of Sterling on the twelfth Mondays after the first Mondays in September and February, and may continue in session two weeks.

In the county of Tom Green on the fourteenth Mondays after the first Mondays in September and February, and may continue in session until the business of the court is disposed of.

In the county of Schleicher, when organized, on the eighth Monday after the first Monday in September and February, and may continue in session two weeks.

(Acts of 1891,
p. 89.)

52. The county of Travis shall constitute the fifty-third judicial district, and the district court shall be held therein as follows: On the first Monday in January, April, September and November in each year and may continue in session until the business is disposed of; provided the April term shall not continue longer than the last Saturday in June, and the November term longer than the last Saturday before the twenty-fifth day of December.

[For special provisions relating to this and the twenty-sixth district, see subdivision 26 of this article.]

(Acts of 1893,
p. 52.)

53. The counties of Falls and McLennan shall compose the fifty-fourth judicial district, and the district court shall be held therein as follows: In the county of Falls on the first Mondays in January and July, and may continue in session eight weeks. In the county of McLennan on the first Mondays in March, September and November, and may continue in session until the business is disposed of.

The two district courts aforesaid in McLennan county shall have concurrent jurisdiction with each other throughout the limits of McLennan county of all matters, civil and criminal, of which jurisdiction is given to the district courts by the constitution and laws of the state; provided, that the judge of the nineteenth judicial district shall never empanel a grand jury in his said court, but may at any time reconvene the grand jury empaneled by the judge of the

fifty-fourth judicial district when in his judgment a necessity therefor exists.

Immediately after this law takes effect, the governor shall appoint some suitable person as judge of the fifty-fourth judicial district, who shall hold said office until the next general election for state and county officers, and until the election and qualification of his successor in office.

The clerk of the district court of McLennan county as heretofore constituted, and his successors in office, shall be the clerk of both of said district courts in McLennan county, and shall perform all the duties pertaining to the clerkship of both of said courts.

Either of the judges of said district courts in McLennan county may, in their discretion, either in term time or vacation, transfer any cause or causes, civil or criminal, that may at any time be pending in his court, to the other district court in McLennan county, by order or orders entered upon the minutes of his court, and where such transfer or transfers are made, the clerk of said courts shall enter such cause or causes upon the docket of the court to which such transfer or transfers are made, and when so entered upon the docket the judge of said court shall try and dispose of said causes in the same manner as if such causes were originally in said court.

54. The district judge presiding over the Texarkana civil and criminal court shall hold two regular terms of said court in each year, one term to be begun and holden on the sixth Monday after the fourth Monday in August in each year, and may continue in session for three weeks, and the other term to be begun and holden on the sixth Monday after the first Monday in February of each year, and may continue in session for three weeks, and he shall hold such special terms as may be authorized in accordance with the law governing special terms of the district court.

TITLE V.

Apprentices.

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

Article 23. [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.

Minor shall not be apprenticed to what persons.

Art. 24. [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.

Duration of apprenticeship.

Art. 25. [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.

Shall not be apprenticed without notice.

Art. 26. [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.

In what county minor shall be apprenticed.

Art. 27. [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.

Obligation shall be entered into and its conditions.

Art. 28. [23] The person to whom such minor is apprenticed shall enter into an obligation in writing, payable to such minor, in the sum to be fixed by the county judge, not less than one thousand dollars, and to be approved by such county judge, conditioned—

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.

Art. 29. [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. Minor 14 years of age may select, etc.

Art. 30. [25] The obligations provided for by article 28, 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. Obligation shall be approved, filed and recorded.

Art. 31. [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. Order of the court apprenticing minor.

Art. 32. [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. Certified copy of order sufficient authority, etc.

Art. 33. [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. Moderate chastisement may be inflicted on minor.

Art. 34. [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. Rights of persons to whom minor is apprenticed.

Art. 35. [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. Not lawful for apprentice to reside out of the county, etc.

Art. 36. [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. Apprentice kept out of county over 30 days, without leave, is discharged.

Proceedings when apprentice runs away, etc.

Art. 37. [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. 38. [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.

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

Art. 39. [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 such authority granted to such person over such minor, and discharging such minor from such apprenticeship.

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

Art. 40. [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.

County judge shall inquire into treatment, etc.

Art. 41. [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.

Minor may be again apprenticed, when.

Art. 42. [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.

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

Art. 43. [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.

Suit upon obligation.

Art. 44. [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.

Costs shall be paid by whom.

Art. 45. [40] In all proceedings apprenticing a minor, or discharging him from 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.

Art. 46. [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 minor is apprenticed.

TITLE VI.

Arbitration.

CHAPTER ONE.

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Right to arbitrate. (Const., art. 16, §13.)

Article 47. [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. 48. [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. Ib.

Art. 49. [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. Ib. §5. P. D. 62.

Art. 50. [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. Ib. §5. P. D. 64.

Art. 51. [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. 52. [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.

Art. 53. [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.

Procedure on trial.

Art. 54. [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. 55. [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. 56. [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. 57. [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. 58. [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. 59. [54] After an agreement to arbitrate is filed as prescribed in article 49, 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 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. 60. [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. 61. [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.

CHAPTER TWO.

ARBITRATION OF GRIEVANCES BETWEEN EMPLOYER AND EMPLOYED.

	Article		Article
Board authorized	61a	Powers and duties of chairman and board	61f
District judge to establish board, etc....	61b	Adjudication terminates powers of board, unless, etc.	61g
If controversy involves different labor organizations, concurrent action necessary	61c	Status quo to be preserved pending arbitration	61h
Submission must be in writing and show what	61d	Compensation of board, witnesses, etc. ...	61i
Arbitrators to take oath, etc.....	61e	Award to take effect.....	61j
		Judgment to be entered, etc.....	61k

Board of arbitration authorized. (Act of 1895, p. 85, §1.)

Article 61a. Whenever any grievance or dispute of any nature growing out of the relation of employer and employes, shall arise or exist between employer and employes, it shall be lawful, upon mutual consent of all parties, to submit all matters respecting such grievance or dispute in writing to a board of arbitrators to hear, adjudicate, and determine the same. Said board shall consist of five persons. When the employes concerned in such grievance or dispute as the aforesaid are members in good standing of any labor organization which is represented by one or more delegates in a central body, the said central body shall have power to designate two of said arbitrators, and the employer shall have the power to designate two others of said arbitrators, and the said four arbitrators shall designate a fifth person as arbitrator, who shall be chairman of the board. In case the employes concerned in any such grievance or dispute as aforesaid are members in good standing of a labor organization which is not represented in a central body, then the organization of which they are members shall designate two members of said board, and said board shall be organized as hereinbefore provided; and in case the employes concerned in any such grievance or dispute as aforesaid are not members of any labor organization, then a majority of said employes, at a meeting duly held for that purpose, shall designate two arbitrators for said board, and said board shall be organized as hereinbefore provided; provided, that when the two arbitrators selected by the respective parties to the controversy, the district judge of the district having jurisdiction of the subject matter shall, upon notice from either of said arbitrators that they have failed to agree upon the fifth arbitrator, appoint said fifth arbitrator.

District judge to establish board, etc. Ib. §2.

Art. 61b. Any board as aforesaid selected may present a petition in writing to the district judge of the county where such grievance or dispute to be arbitrated may arise, signed by a majority of said board, setting forth in brief terms the facts showing their due and regular appointment, and the nature of the grievance or dispute between the parties to said arbitration, and praying the license or order of such judge establishing and approving of said board of arbitration. Upon the presentation of said petition it shall be the duty of said judge, if it appear that all requirements of this law have been complied with, to make an order establishing such board of arbitration and referring the matters in dispute to it for hearing, adjudication and determination. The said petition and order, or a copy thereof, shall be filed in the office of the district clerk of the county in which the arbitration is sought.

Art. 61c. When a controversy involves and affects the interests of two or more classes or grades of employes belonging to different labor organizations, or of individuals who are not members of a labor organization, then the two arbitrators selected by the employes shall be agreed upon and selected by the concurrent action of all such labor organizations, and a majority of such individuals who are not members of a labor organization.

If controversy involves different labor organizations, concurrent action is necessary.
Ib. §3.

Art. 61d. The submission shall be in writing, shall be signed by the employer or receiver and the labor organization representing the employes, or any laborer or laborers to be affected by such arbitration who may not belong to any labor organization, shall state the question to be decided, and shall contain appropriate provisions by which the respective parties shall stipulate as follows:

Submission must be in writing and must show, what.
Ib. §4.

1. That pending the arbitration the existing status prior to any disagreement or strike shall not be changed.

2. That the award shall be filed in the office of the clerk of the district court of the county in which said board of arbitration is held, and shall be final and conclusive upon both parties, unless set aside for error of law, apparent on the record.

3. That the respective parties to the award will each faithfully execute the same, and that the same may be specifically enforced in equity so far as the powers of a court of equity permit.

4. That the employes dissatisfied with the award shall not by reason of such dissatisfaction quit the service of said employer or receiver before the expiration of thirty days, nor without giving said employer or receiver thirty days written notice of their intention so to quit.

5. That said award shall continue in force as between the parties thereto for the period of one year after the same shall go into practical operation, and no new arbitration upon the same subject between the same parties shall be had until the expiration of said one year.

Art. 61e. The arbitrators so selected shall sign a consent to act as such and shall take and subscribe an oath before some officer authorized to administer the same to faithfully and impartially discharge his duties as such arbitrator, which consent and oath shall be immediately filed in the office of the clerk of the district court wherein such arbitrators are to act. When said board is ready for the transaction of business it shall select one of its members to act as secretary and the parties to the dispute shall receive notice of a time and place of hearing, which shall be not more than ten days after such agreement to arbitrate has been filed.

Arbitrators to take oath, etc.
Ib. §5.

Art. 61f. The chairman shall have power to administer oaths and to issue subpoenas for the production of books and papers and for the attendance of witnesses to the same extent that such power is possessed by the court of record or the judge thereof in this state. The board may make and enforce the rules for its government and transaction of the business before it and fix its sessions and adjournment, and shall herein examine such witnesses as may be brought before the board, and such other proof as may be given relative to the matter in dispute.

Powers and duties of chairman and board.
Ib. §6.

Art. 61g. When said board shall have rendered its adjudication and determination its powers shall cease, unless there may be at the time in existence other similar grievances or disputes between the same class of persons mentioned in article 61a, and in such case such persons may submit their differences to said board, which shall have power to act and adjudicate and determine the same as

Adjudication terminates the powers of the board, unless, etc.
Ib. §7.

fully as if said board was originally created for the settlement of such difference or differences.

Status quo to be preserved pending arbitration.
Ib. §8.

Art. 61h. During the pendency of arbitration under this chapter it shall not be lawful for the employer or receiver party to such arbitration, nor his agent, to discharge the employes parties thereto, except for inefficiency, violation of law, or neglect of duty, or where reduction of force is necessary, nor for the organization representing such employes to order, nor for the employes to unite in, aid or abet strikes or boycotts against such employer or receiver.

Compensation of board, witnesses, etc.
Ib. §9.

Art. 61i. Each of the said board of arbitrators shall receive three dollars per day for every day in actual service, not to exceed ten days, and traveling expenses not to exceed five cents per mile actually traveled in getting to or returning from the place where the board is in session. The fees of witnesses of the aforesaid board shall be fifty cents for each day's attendance and five cents per mile traveled by the nearest route to and returning from the place where attendance is required by the board. All subpoenas shall be signed by the secretary of the board and may be served by any person of full age authorized by the board to serve the same. And the fees and mileage of witnesses and the per diem and traveling expenses of said arbitrators shall be taxed as costs against either or all of the parties to said arbitration, as the board of arbitrators may deem just, and shall constitute part of their award, and each of the parties to said arbitration shall, before the arbitration [arbitrators] proceed to consider the matters submitted to them, give a bond, with two or more good and sufficient sureties in an amount to be fixed by the board of arbitration, conditioned for the payment of all expenses connected with the said arbitration.

Award to take effect.
Ib. §10.

Art. 61j. The award shall be made in triplicate. One copy shall be filed in the district clerk's office, one copy shall be given to the employer or receiver, and one copy to the employes or their duly authorized representative. That the award being filed in the clerk's office of the district court, as hereinbefore provided, shall go into practical operation and judgment shall be entered thereon accordingly at the expiration of ten days from such filing, unless within such ten days either party shall file exceptions thereto for matter of law apparent on the record, in which case said award shall go into practical operation and judgment rendered accordingly when such exceptions shall have been fully disposed of by either said district court or on appeal therefrom.

Judgment to be entered, etc.
Ib. §11.

Art. 61k. At the expiration of ten days from the decision of the district court upon exceptions taken to said award as aforesaid, judgment shall be entered in accordance with said decision, unless during the said ten days either party shall appeal therefrom to the court of civil appeals holding jurisdiction thereof. In such case only such portion of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of the questions of law presented by said exceptions and to be decided. The determination of said court of civil appeals upon said questions shall be final, and being certified by the clerk of said court of civil appeals, judgment pursuant thereto shall thereupon be entered by said district court. If exceptions to an award are finally sustained, judgment shall be entered setting aside the award; but in such case the parties may agree upon a judgment to be entered disposing of the subject matter of the controversy, which judgment, when entered, shall have the same force and effect as judgment entered upon an award.

TITLE VII.

Archives.

CHAPTER ONE.

ARCHIVES OF THE GENERAL LAND OFFICE.

	Article		Article
What shall be considered archives of the general land office.....	62	Deeds of second or third seal.....	64
Effect to be given to archives deposited in the general land office.....	63	How such deeds, etc., may be withdrawn.	65

Article 62. [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.

6. All owners of lands between the Nueces and Rio Grande rivers, under grants or titles from the former government, which grants or titles are such as are described in section 4 of article 13 of the present constitution, and have been, previous to the adoption of this constitution, recorded in the respective counties where the land is situated, but have not yet been deposited or archived in the general land office of this state, be and they are hereby authorized and required to deposit and archive said grants or titles in said general land office; and provided further, that such titles when so archived shall be subject to all defenses and objections that they

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.

(Acts 1881, p. 37.)

otherwise would have been if not so archived, and said act of archiving shall invest said titles with no greater validity than they before had as titles recorded in the proper county, and the commissioner of the general land office is hereby authorized and required to receive the same as archives of said office.

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

Art. 63. [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, 1862, p. 35.) P. D. 77.

Art. 64. [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.

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

Art. 65. [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.

CHAPTER TWO.

OTHER PUBLIC ARCHIVES.

	Article		Article
Duty of secretary of state as to archives.	66	Archives of the comptroller's office.....	69
Archives of the Republic of Texas, etc..	67	Certain books, papers, etc., declared to be archives.....	70
Historical archives.....	68		

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

Article 66. [61] The secretary of state is authorized to take possession of one or more rooms in the basement of the capitol for the use of the state department and the better preservation and protection of the archives of the state department.

Archives of the Republic of Texas, etc. (Acts of 1887, p. 47.)

Art. 67. [62] The entire archives of the congress of the late republic of Texas, and of the several legislatures of the state of Texas, arranged and filed according to law, together with the records, books and journals of said congress and legislatures of the state, prepared in accordance with law, and heretofore or that may be hereafter deposited in the office of the secretary of state, are declared to be archives of said office.

Historical archives. (Act Feb. 7, 1853, p. 38.) P. D. 83. (Act Aug. 25, 1856, p. 50.) P. D. 85-6. (Const., art. 10, §39.) (Act Aug. 21, 1876, p. 225, §19.)

Art. 68. [63] All books, papers, maps, documents, memoranda and data which relate to the history of Texas as a province, colony, republic and state, which have been or may hereafter be delivered to the commissioner of agriculture, 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 agriculture, 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.

Art. 69. [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 comptroller's office, and shall constitute a part of the archives of his office.

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

Art. 70. [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.

Assignments for Creditors

[Liens on goods exposed for sale void, see Frauds and Fraudulent Conveyances.]

Article	Article
General assignments, how made and construed; preferences void.....	Property fraudulently sold by assignor, passes by the assignment and may be recovered by assignee.....
Inventory attached, what shall contain and how verified.....	Failure to attach inventory presumption of fraud, but does not vitiate assignment; assignor may be examined.....
Assignment for creditors accepting, and discharge of assignor.....	Verified claim shall be allowed by assignee, unless contested as provided....
Notice of assignee's appointment, when and how given.....	Unmatured claims discounted and collateral securities estimated on proof of claims
How and when consenting creditors may accept	Assignee may be removed as provided, and vacancy from any cause filled, how
Where assignee shall reside, and his preliminary duties and obligations.....	Dividend declared, when and how, and allowance to assignee.....
Fraud, etc., will not defeat assignment..	Final report and discharge of assignee..
Proof of claim, when and how made.....	
Surplus in assignee's hands subject to garnishment	

General assignment, how made and construed; preferences void. (Act of July 24, 1879, p. 54.)

Article 71. Every assignment made by an insolvent debtor, or in contemplation of insolvency, for the benefit of his creditors, shall provide, except as herein otherwise provided, for a distribution of all his real and personal estate, other than that which is by law exempt from execution, among all his creditors in proportion to their respective claims, and however made or expressed, shall have the effect aforesaid, and shall be construed to pass all such estate, whether specified therein or not, and in every assignment made under this title, whether for the benefit of all creditors, or accepting creditors, any attempted preference of one creditor, or creditors of the assignor shall be deemed fraudulent and without effect.

Inventory attached, what shall contain and how verified. Ib.

Art. 72. Every assignment shall be proved or acknowledged and certified and recorded in the same manner as provided by law in conveyances of real estate or other property, and the debtor shall annex to such assignment an inventory containing the following statement:

1. A full and true account of all the creditors of such debtor or debtors.
2. The place of residence of each creditor if known to such debtor or debtors, and if not known, that fact to be so stated.
3. The sum owing to each creditor, and the nature of each debt or demand, whether arising on written security account or otherwise executed.
4. The true cause and consideration of such indebtedness in each case, and the place where such indebtedness arose.
5. A statement of any existing judgment, mortgage, collateral or other security for the payment of any such debt.
6. A full and true inventory of all such debtor's estate at the date of such assignment, both real and personal, in law or in equity, and the incumbrances existing thereon, and of all vouchers and securities relating thereto, and the value of such estate according to the best knowledge of such debtor or debtors.
7. An affidavit shall be made by such debtor or debtors, and an-

nexed to and delivered with such inventory or schedule, that the same is in all respects just and true according to the best of such debtor or debtors' knowledge and belief. Nothing contained in this chapter shall affect the assignor's right to retain all such of his property as is by the constitution and laws of this state exempt from execution, but such list and inventory shall not be conclusive except as against the debtor making the same.

Art. 73. Any debtor desiring so to do, may make an assignment for the benefit of such of his creditors only as will consent to accept their proportional share of his estate, and discharge him from their respective claims, and in such case the benefits of the assignment shall be limited and restricted to the creditors consenting thereto, and such debtor shall thereupon be and stand discharged from all further liabilities to such consenting creditors on account of their respective claims, and when paid they shall execute and deliver to the assignee for the debtor a release therefrom; provided, that such debtor shall not be discharged from liabilities to a creditor who does not receive as much as one-third of the amount due and allowed in his favor as a valid claim against the estate of such debtor.

Assignment for creditors, accepting and discharge of assignor. (Acts 1883, p. 46.)

Art. 74. Every assignee shall, within thirty days after the execution of the assignment, give public notice of his appointment in some newspaper printed in the county where the assignor resides, or where his principal business was conducted, or, if no newspapers be printed therein, then in the newspaper published nearest to such place of residence or business, and which notice shall be published for three successive weeks, and so far as he can, the assignee shall also give personal notice, or notice by mail, to each of the creditors of the assigning debtor.

Notice of assignee's appointment, when and how given. (Act July 24, 1879, p. 37.)

Art. 75. The creditors of the assignor consenting to such assignment, shall make known to the assignee their consent in writing, within four months after the publication of the notice provided in the preceding article, and no creditor not assenting shall receive or take any benefit under the assignment; provided, however, that any creditor who had no actual notice of such assignment, may make known his assent at any time before any distribution of assets under the assignment has been made; and provided further, that the receipt by a creditor of any portion of his claim from the assignee, shall be conclusive evidence of the assent of such creditor to the assignment.

How and when consenting creditors may accept. Ib.

Art. 76. Every such assignee shall be a resident of this state and of the county in which the assignor resides, or in which his principal business was conducted, and he shall forthwith after the execution and delivery of the deed of assignment, cause the same to be recorded as herein provided, in the county of such assignee's residence, and also in every county in which there is any real property conveyed to him by such deed of assignment, and shall execute a bond, with sureties, to be approved by the judge of the county court of the county in which the assignee resides, or by the judge of the district court of the judicial district in which such county is situated, conditioned that he will faithfully discharge his duties as such assignee, and that he will make proportional distribution of the net proceeds of the assigned estate among the creditors entitled thereto, which bond shall be payable to the state of Texas, and shall be filed with the county clerk of the county in which such assignee resides, and shall inure to the benefit of the assignor, and the creditor, or creditors, who may maintain an action thereon against such assignee and sureties, in his or their own name, jointly or severally, for any

Where assignee shall reside and his preliminary duties and obligations. (Acts of 1883, p. 46.)

breach thereof, or violation of this law, by reason of which such assignor or creditor shall sustain damage, and upon the filing of said bond the assignee shall take possession of the assigned property, and proceed to execute the assignment, and if such assignee shall not, within five days after the delivery of the deed of assignment, execute an approved bond and file the same with the county clerk, as herein provided, such assignment shall nevertheless take effect as against the assignor and his creditors, and it shall be the duty of the county judge, or judge of the district court, as aforesaid, upon the application of the assignor, or any creditor, and being satisfied that such bond has not been given, approved and filed, to appoint in writing another competent assignee, who shall, upon the execution of such bond, approved and filed as herein provided, take possession of the assigned property and proceed to execute the assignment.

Fraud of assignor will not defeat assignment.
Ib.

Art. 77. No fraudulent act, intent or purpose of the assignor or assignee shall have the effect to defeat the assignment or to deprive the creditors consenting thereto from the benefits thereof, but any such fraudulent act, intent or purpose on the part of the assignee shall be sufficient cause for his removal, as being an unsuitable person to perform the trust, and any consenting creditor may be or become a party to prosecute or defend in any suit or proceeding necessary or proper for the enforcement of his rights under such assignments, or for the protection of his interests in the assigned property.

Proof of claim, when and how made.
(Acts of 1879, p. 57.)

Art. 78. Every creditor consenting to an assignment shall, within six months from the time of the first publication of the notice of the appointment of the assignee, file with such assignee a distinct statement of the particular nature and amount of his claim against the debtor, which shall be supported by an affidavit of the creditor, his agent or attorney, that the statement is true, that the debt is just, and that there are no credits or offsets that should be allowed against the claim, except as shown by the statement, and no creditor shall take any benefit under any assignment whatever who neglects to file such statement.

Surplus subject to garnishment.
Ib.

Art. 79. Any creditor not consenting to the assignment may garnishee the assignee for any excess of such estate remaining in his hands, after the payment to the consenting creditors, the amount of their debts and the costs and expenses of executing the assignment.

Property fraudulently sold by assignor passes by the assignment and may be recovered by assignee.
Ib.

Art. 80. All property conveyed or transferred by the assignor previous to and in contemplation of the assignment, with the intent or design to defeat, delay or defraud creditors, or to give preference to one creditor over another, shall pass to the assignee by the assignment, notwithstanding such transfer; and the assignee, or in case of his neglect or refusal, any creditor or creditors may in his name, upon securing such assignee against cost or liability, sue for, recover, collect and cause the same to be applied for the benefit of creditors as other property belonging to the debtor's estate in the hands of the assignee; but if it shall appear in such action that the purchaser of any such property bought the same of the assignor in good faith and for a valuable consideration, and without any reason to believe that the debtor was conveying or transferring the same with the intent or design aforesaid, such purchaser shall be held to have acquired as against the assignee and creditors aforesaid a good and valid title to such property.

Art. 81. No assignment shall be declared fraudulent or void for want of any inventory or list, as provided herein, but the absence of the same shall be deemed prima facie evidence that the assignor or debtor has concealed or secreted some of his estate from his assignee or creditors, and whether the said list and inventory be prepared and filed or not, the judge of the district or county court, in whose court the proceedings shall have been filed, and having jurisdiction of the estate assigned, may, on the application of the assignee, or of any creditor of the assignor or debtor, or without such application, if the judge see fit, at all times require, upon such reasonable notice as the judge may direct, the assignor or debtor, or any other person, to attend and submit to an examination, on oath, upon all matters relating to the disposition made, or status of the property of the estate assigned, including all transactions in the past bearing upon the rights of the assignee or creditors with respect to the estate in assignment, as contemplated in law. The judge may enforce attendance and obedience to the orders made, by a writ or order directed to the sheriff, or any constable, commanding the arrest of the persons referred to in the writ or order, to be brought before the judge at a time named for the purpose of examination, as provided herein, and such examination shall be in writing, and shall be signed by the persons examined, and shall be filed and attested or sworn to with the clerk of the court wherein the proceedings are pending, for the use of those interested in the estate; provided, nevertheless, that no assignor or debtor shall be prosecuted or punished for any matter or thing disclosed by him on such examination as had above. The costs of such proceedings to be paid out of the estate assigned, or by the applicant for the examination, as the judge in each case may deem right and proper to order.

Failure to attach inventory pre-sumption of fraud, but does not vitiate assignment; assignor may be examined. (Acts 1883, p. 46.)

Art. 82. The statement of a creditor, verified and filed with the assignee as hereinbefore provided, shall be sufficient prima facie evidence to justify the assignee in allowing it as a valid claim against the estate, and shall be so allowed, and such creditor entitled to his proportional share of the debtor's estate, unless the assignor, or other creditor disputing the same, shall, within sixty days after the expiration of the time within which the creditors are required by this title to file their statements, institute an action in the district or county court of the proper county to set aside the allowance and to restrain the payment thereon, for which purpose the assignor or any disputing creditor or creditors may have a remedy, jointly or severally, by injunction or other proper action to try the justness and validity of the disputed claim, and if it appears that an action could not successfully be maintained at law by the creditor against the assignor upon such claim or any disputed part thereof, the same shall be disallowed, in whole or in part, as the case may be, and the assignee restrained from paying the same, or such portion thereof as may be disallowed, and for the information of the assignor and creditors, it is further provided, that the assignee shall allow them, or any of them, to take a copy of any creditor's statement of his claim that has been filed with such assignee as herein provided.

Verified claims shall be allowed by assignee unless contested. (Acts 1879, p. 57.)

Art. 83. Claims that are not due may be allowed at their present value, by discounting them at the rate of interest mentioned in the contract, if any, otherwise at the legal rate, and if any creditor holds collateral security of less value than his debt, the value thereof may be estimated by the assignee, and only the difference between such sum and the debt shall be allowed.

Unmatured claims discounted and collateral securities estimated on proof of claim. Ib.

Assignee may
be removed
as provided
and vacancy
from any
cause filled,
how.
lb.

Art. 84. If any assignee becomes unsuitable to perform the trust, refuses or neglects so to do, or mismanages the property, the county judge or judge of the district court may, upon the application of the assignor, or one or more of the creditors, upon reasonable notice to all parties interested, by publication or otherwise, as such judge may direct, remove such assignee, and in case of a vacancy by death or otherwise shall appoint another in his place, who shall have the same powers and be subject to the same liabilities as the original assignee.

Dividend de-
clared, when
and how.
lb.

Art. 85. Whenever any assignee shall have in his hands funds sufficient to pay ten per cent of the debts due by the assignor, he shall make a pro rata distribution of the same among said creditors, and the assignee shall be entitled to reasonable compensation for his services and his necessary costs and expenses, including also his attorneys' fees, all to be allowed, in case of difference between the parties, by the county judge or judge of the district court.

Allowance to
assignee.

Final report
and discharge
of assignee.
lb.

Art. 86. Whenever any assignee shall have fully performed the duties of his trust and desires to be finally discharged therefrom, he may make a report of his proceedings under the assignment, showing the moneys and assets that have come into his hands, and how the same have been disbursed and disposed of, the truth of which shall be verified by his affidavit, and such report shall thereupon be filed and recorded in the office of the county clerk of the county in which the assignment is recorded, and no action shall be brought against such assignee by reason of anything done by him under the assignment as shown by his report, unless the same be brought within twelve months from the time of the filing thereof, as aforesaid; and any moneys or funds on hand shall be deposited in the district court, subject to be paid out upon the decree of said court.

TITLE IX.

Asylums.

CHAPTER ONE.

OF THE LUNATIC ASYLUMS.

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Article 87. [66] The asylums heretofore established by law and any others that may hereafter be established for the care and treatment of insane persons, shall be managed and controlled in accordance with the provisions of this title.

Lunatic asylum recognized and continued. (Act 1883, p. 103.)

THE BOARD OF MANAGERS.

Art. 88. The general control, management and direction of the affairs of the Texas asylums for the insane shall be vested in boards of managers, to be styled, the boards of managers of the lunatic asylums, subject only to such rules and regulations as may be prescribed by the legislature. Three of the members of each board shall reside within five miles of their respective asylums.

Board of managers provided for. Ib.

Art. 89. [67] The governor shall appoint for each lunatic asylum a board of managers consisting of five members, who shall hold their office for two years, or until their successors are appointed and qualified; and whenever a vacancy occurs in said boards it shall be

Board of managers, how constituted. Ib.

filled by the governor, and the term of office of the person so appointed shall be for the unexpired term of the person whose place is made vacant. The board of managers shall be appointed by the governor, by and with the advice and consent of the senate.

Compensation of members of board.
Ib.

Art. 90. [68] Each of the members of the boards of managers shall be paid five dollars per day and five cents a mile for going and returning from the asylums for the purpose of holding their monthly meetings provided for by this act, and no member shall be paid, except in case of his actual attendance on said meetings, and the certificate of the president of the boards of managers, approved by the superintendent, shall be a sufficient voucher for the comptroller to draw his warrant upon the treasurer for the amount due each member of said board for his attendance on said meetings; provided, no meeting shall be for a longer time than one day.

Organization of the board.
(Act Feb. 5, 1853, p. 114, §3, p. 116, §6.)
P. D. 114, 118.

Art. 91. [69] The boards 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 boards shall constitute a quorum for the transaction of business.

Meetings and records of the boards.
(Act 1853, R. S., p. 103.)

Art. 92. [70] The boards of managers shall hold monthly meetings at the asylums, 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.

Powers of the board.
Ib.

Art. 93. [71] The members of said boards of managers shall be persons distinguished for their philanthropy, and when appointed in accordance with this act, they shall have the general direction and control of all the property and business of the asylums, in accordance with the requirements of law, and in all those cases not provided for by law they shall have such direction and control of the property and business of the asylums according to the by-laws, rules and regulations of the asylums. They may take and hold in trust any gift or devise of real or personal estate for the benefit of the said asylums, and apply the same as the donor or deviser may direct.

Same subject.
Ib.

Art. 94. [72] The board of managers shall have power—

1. To make all necessary by-laws and regulations not inconsistent with the constitution and laws of this state, for the government of their institutions, officers, employes and inmates, and for the admission of visitors.

2. To determine the salaries and wages of all officers and employes of the asylums.

3. To discharge, upon the recommendation of the superintendent, any officer, employe or patient in the asylums.

4. Upon the nomination of the superintendents, to appoint the assistant physician, steward, matron and apothecary to the asylums.

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

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

7. They shall also cause to be kept a clinical record of all cases admitted in the asylums.

Monthly inspections.
Ib.

Art. 95. [73] The managers shall maintain an effective inspection of their asylums, a committee for which purpose shall visit them once every month, a majority once every quarter and the whole board once a year, at the time and in the manner prescribed by the by-laws. In a book kept by the managers for this purpose, the visiting manager or managers shall note the date of each visit, the condition of

the house, patients, etc., with remarks of commendation or censure, and all the managers present shall sign the same.

Art. 96. [74] The general result of these inspections, with suitable hints and suggestions, shall be inserted in the biennial report detailing the past year's operations and actual state of the asylums, which the boards shall make to the legislature in the month of January of each alternate year, accompanied by the report of the medical superintendents and stewards.

Annual reports by the board.
Ib.

Art. 96a. The members of the board of managers of the Southwest Texas lunatic asylum, situated at San Antonio, Texas, be and they are hereby authorized and empowered to sell, lease, or dispose of the water belonging to the state, and flowing from any of the artesian wells on the grounds of said asylum, for such price and upon such terms and conditions as the said board may deem to be the best interest of the state; provided, that the term of said lease shall not exceed ten years.

Board authorized to dispose of artesian water. (Act 1893, p. 20.)

Art. 96b. The members of the board of managers of the state lunatic asylum, situated at Austin, Texas, be and are hereby authorized and empowered to sell, lease or dispose of the water belonging to the state, and flowing from any of the artesian wells on the grounds of said asylum, for such price and upon such terms and conditions as the said board may deem to be the best interest of the state; provided, that the term of said lease shall not exceed ten years.

Same. (Act 1895, p. 107.)

II. THE SUPERINTENDENTS.

Art. 97. [75] The boards of managers of the lunatic asylums shall elect a medical superintendent of their respective asylums, who shall hold his office for two years. He shall be a married man, a skillful physician, and also be experienced in the treatment of insanity. He shall reside at the asylum with his family, and he shall devote his whole time exclusively to the duties of his office.

Their appointment, term, etc. (Act 1885, p. 9.)

Art. 98. [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. 28, 1856, p. 60, §64.) (Act Feb. 5, 1858, p. 116.) P. D. 111, 118.

Art. 99. [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.

Art. 100. [79] The boards of managers shall have power to remove the superintendent for good and sufficient cause only.

Removal of superintendent. (Acts 1883, p. 103.)

Art. 101. [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 asylums 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; and it shall be his duty to admit any of the board of managers into every part of the

Powers and duties of superintendent. Ib.

asylum, and to exhibit to him or them on demand all the books, papers and accounts belonging to the institution or pertaining to its business, management, discipline or government, also to furnish copies, abstracts and reports whenever required by the board.

Same subject.
Ib. p. 116.
P. D. 118.

Art. 102. [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 intrusted to him are judiciously and economically expended.

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

Art. 103. [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. 104. [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 inventory.
Ib. p. 116, §6.
P. D. 118.

Art. 105. [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. 106. [85] No manager or other person connected with the asylums shall sell or be in any way concerned in the sale of any merchandise, supplies or other articles to the asylums, or have any interest in any contract therewith.

Asylum money to remain in the treasury.

Art. 107. [86] The appropriations made from time to time by the legislature for the support and maintenance of the asylums 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 expenditures.

Art. 108. [87] The boards 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 superintendents and approved by the presidents of the boards of managers.

Funds from outside sources, how disposed of.

Art. 109. [88] All funds of every character received into or belonging to the asylums, other than the sums of money appropriated for their support from time to time by the legislature, shall, as soon as received, be paid over to the state treasurer by the superintendents 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 superintendents, approved by the presidents of the boards of managers.

Art. 110. [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. 111. [90] The treasurer of the state shall keep an exact account of the moneys received by him belonging to the asylums, 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. 112. [91] The following persons may be admitted into the asylums 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. 113. [92] Before any person can be received as a patient under paragraph 2 of the preceding article, 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.
Ib.

Art. 114. [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.
Ib.

Art. 115. [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. 116. [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 136 and 137 of this chapter.

Public patients also, but state may be reimbursed.

Art. 117. [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.)

Preferences
in admission.
(Acts of 1853,
p. 105.)

Art. 118. [97] If application be made for the admission of more patients than can be accommodated in the asylum, preference shall be given, in all instances, to public 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, and no private patients shall be admitted during pendency of an application by a public patient, nor shall any public non-indigent patient be admitted during the pendency of an application by an indigent public patient.

Idiots, etc.,
not to be ad-
mitted.

(Act Feb. 5,
1858, p. 117,
§12.)

P. D. 124.

Discharge of
patients.

(Act Feb. 5,
1858, p. 118,
§§11, 15.)

127.

P. D. 128.

Art. 119. [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. 120. [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.

Same subject.

(Act Feb. 5,
1858, p. 118,
§16.)

P. D. 128.

Art. 121. [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.

State to pay
expenses, etc.,
of convict dis-
charged.
(Acts of 1895,
p. 164.)

Art. 122. [101a] When a convict shall be discharged from one of the state penitentiaries, and is insane at the time of his discharge, and it shall be adjudged by a court of competent jurisdiction within thirty days after his discharge that said convict is insane and that he should be placed under restraint, he shall be delivered to the superintendent of the penitentiaries, or to one of the assistant superintendents of the penitentiary, to be conveyed to one of the lunatic asylums of this state by said superintendent or under his direction; and the expenses incurred in said adjudication and in keeping and conveying such patient to the asylum, including such clothing as shall be necessary for his comfort, shall be paid by the state upon the certificate of the superintendent of the penitentiary.

County to pay
expenses of
conveying
public pa-
tients.

(Act Aug. 15,
1876, p. 140,
§6.)

County to be
reimbursed,
when.

Art. 123. [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. 124. [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.

Transporta-
tion home by
the state.

(Act Aug. 15,
1876, p. 140,
§6.)

Escape from
asylum.

(Act Feb. 5,
1858, p. 119,
§22.)

P. D. 133.

Art. 125. [103] The expense of conveying to their homes public patients discharged from the asylums, and the necessary clothing furnished to them at the time of their discharge, shall be paid by the state.

Art. 126. [104] If any person 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. 127. [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.

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

V. OF JUDICIAL PROCEEDINGS IN CASES OF LUNACY.

Art. 128. [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.

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

Art. 129. [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.

The writ and
its requisites.

Art. 130. [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.

Jury to be
summoned.
(Act Aug. 15,
1876, p. 138,
§1.)
(Const., art.
5, §17.)

Art. 131. [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. 132. [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 impanel-
ed 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. 133. [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 submit-
ted.
(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 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.

Verdict.

Art. 134. [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.

Judgment.

Art. 135. [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.

Reimbursement to the state from lunatics not indigent.

Art. 136. [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.

Limitation as to amount and procedure.

Art. 137. [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.

County attorney to represent state.

Art. 138. [116] The county attorney shall appear and represent the state in all cases provided for in the two preceding articles.

Warrant to convey lunatic to asylum. (Act Aug. 15, 1876, p. 139, §3.)

Art. 139. [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 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. 133, §1.)

Art. 140. [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. 141. [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.

Art. 142. [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.

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

CHAPTER TWO.

OF THE DEAF AND DUMB, AND THE BLIND, AND OTHER ASYLUMS.

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I. BOARD OF TRUSTEES.

Article 143. [121] The general control, management and direction of the affairs, property and business of the deaf and dumb asylum, the blind asylum, the deaf and dumb and blind asylum for colored youths, the orphan asylum, and the Texas confederate home, 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," and "the board of trustees of the deaf, dumb and blind asylum for colored youths," and "the board of trustees of the orphan asylum," and "the board of trustees of the Texas confederate home," respectively. The provisions of this chapter shall apply to each of said asylums, except where they conflict with special provisions relating to particular asylums.

Board of trustees.

Art. 144. [122] The governor shall appoint a board of trustees for each, consisting of five members each, who shall hold their office for two years, or until their successors are appointed and qualified; and whenever a vacancy occurs in said board, it shall be filled by the governor, and the term of office of the person so appointed shall be for the unexpired term of the person whose place is made vacant. The appointment of said board shall be by and with the advice and consent of the senate.

Boards, how constituted. (Acts of 1883, p. 109.)

Art. 145. [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.

Organization of the boards.

Meetings of
the boards.

Art. 146. [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.

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

Art. 147. [125] The boards of trustees shall have power—

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.

Shall control
appropriation
for improve-
ments.
Ib. §3.

Art. 148. [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.

Itemized ac-
count to be
filed.
Ib.

Art. 149. [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.

Duplicate re-
ceipts to be
taken.
Ib.

Art. 150. [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.

Reports of
the trustees.
(Acts of 1833,
p. 103.)

Art. 151. [129] On the first of January of each year the board of trustees shall report in writing to the legislature the general operations of their respective asylums for the past two years, and accompany the same with such suggestions as they may deem important to the welfare of the institution.

The compen-
sation of trus-
tees.
Ib.

Art. 152. [130a] The members of each board of trustees shall be paid five dollars each per day, and mileage at the rate of five cents per mile in going to and returning from their respective asylums, for their services in attending the quarterly meetings provided for in article 146; provided, that no member shall draw pay for said quarterly meetings unless he shall have actually attended said meeting; and provided further, that no member can draw pay under this article for more than one day's attendance upon said quarterly meeting, and the certificate of the president of the board, approved by the superintendent, shall be sufficient evidence upon which the comptroller can draw a warrant upon the treasurer of the state to pay the amount provided for in this article.

II. THE SUPERINTENDENT.

Appointment
of superin-
tendent and
term of office.
Ib.

Art. 153. [130] The board of trustees of each of said asylums respectively shall elect a superintendent of each of said asylums, who shall hold his office for the period of two years. Each of said superintendents shall have had special advantages and practical experience in the management of the persons committed to his charge by virtue of his appointment.

Oath and
bond.
Ib.

Art. 154. [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.

Art. 155. [132] The board of trustees of each of said asylums shall have power to remove the superintendent for good cause only.

Removal of superintendent.
Ib.

Art. 156. [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., §84, 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. 157. [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 financier and purchasing agent of the asylum for all supplies not furnished by contract in accordance with the provisions of chapter three of this title.

Same subject.
Ib.

Art. 158. [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.

Report of receipts and expenditures.
Ib.

Art. 159. [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.

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

III. MISCELLANEOUS PROVISIONS.

Art. 160. [137] The board of trustees and the superintendent shall appoint an oculist for the blind asylum, who shall be skilled in his profession and a married man, and who shall attend regularly at the asylum and administer treatment to all cases of blindness among its pupils deemed curable.

Appointment of oculist and qualifications.
(Acts of 1883, p. 109, Amend. 1895, Sen. Jour., p. 478.)

Art. 161. [138] The oculist shall hold his office for the period of two years, and the board of managers and the superintendent may remove him for good cause only.

Removal of oculist.
Ib.

Art. 162. [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

Deaf and dumb pupils to learn printing.
(Act March 13, 1875, pp. 91-2, §81, 2.)

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. 163. [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. 164. [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 print-
ing at asylum.
Ib.
(Act June 27,
1876, p. 35,
§7.)

Art. 165. [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.

IV. ORPHAN ASYLUM.

Superin-
tendent ap-
pointed and
duties.
(Acts of 1887,
p. 129.)

Art. 166. The board of trustees of the orphan asylum shall appoint a superintendent of said asylum, upon the nomination of the governor, whose duties of office shall be the supervision of the affairs of said asylum, keeping the accounts of the same, and its general management, under the direction of the board of managers.

Children ad-
mitted, when.
Ib.

Art. 167. Said board of managers shall admit all children under the age of fourteen years, subject only to such restrictions as they may deem requisite to the welfare and good government of said asylum.

List of chil-
dren to be
made, etc.
Ib.

Art. 168. In addition to the other duties of said superintendent, he shall keep a carefully prepared list containing the names and ages of each and every child, as well as such other data concerning the history of said children as the board of managers may prescribe, said lists to be recorded in a well bound book for said purpose, and subject to the inspection of all persons who may desire to examine its contents. He shall annually deliver over to the proper authorities a list of all children within the scholastic age, and see that their pro rata of the public free school fund is set aside to their credit, and that they are provided with proper educational facilities. He shall promptly answer all inquiries, by correspondence or otherwise, concerning the orphans under his charge, and promptly inform the board of managers when an opportunity is presented to secure a good and permanent home for any child under his charge.

Child removed
from, how.
Ib.

Art. 169. No person shall be permitted to remove a child from said asylum except under such lawful rules and regulations as the board of managers may adopt, and in no case shall a child be removed therefrom by any person other than the natural guardian of said child, or the duly qualified guardian of the person of such child, or the parent of said child by adoption.

Salary of su-
perintendent.
Ib.

Art. 170. The superintendent of said asylum shall receive such salary each year as may be provided by the board of managers. In no case shall such salary be fixed at an amount exceeding one thousand dollars per annum.

Matron's
salary, etc.
Ib.

Art. 171. There shall be a matron of said asylum to be chosen by the superintendent, with the consent of the board of managers, whose salary shall not exceed forty-five dollars per month.

Board to dis-
pose of ar-
tesian water.
(Acts 1895,
p. 15.)

Art. 171a. The board of managers of the State Orphans Home, situated at Corsicana, Texas, be and are hereby authorized and empowered to sell, lease or dispose of the surplus water belonging to the state, and flowing from the artesian well on the grounds of said orphans' home, for such price and upon such terms and condi-

tions as the said board may deem best; provided, that the term of said lease shall not exceed ten years.

V. CONFEDERATE HOME.

BOARD OF MANAGERS.

Art. 172. The governor shall appoint a board of five ex-confederate soldiers for the management of said home, said managers to remain in office two years, or until their successors are appointed and qualified; and they shall be governed in their regulations of the affairs of said home by the laws now in existence relative to the deaf, dumb and blind institutions of this state, so far as the same may be applicable, and shall make and prescribe such rules and regulations as may be necessary for the internal government, discipline and management of the home, and shall have power to enforce obedience to and compliance with said rules and regulations by discharging from the home, if in its judgment it be necessary, any inmate who may violate said rules and regulations; and said board shall be required to make such examinations from time to time as it may deem necessary, as to the qualifications and record as a soldier in the confederate army or navy of any inmate, and to discharge at once any said inmates who procured admission to the home by fraud or misrepresentation; and said board shall every three months cause to be examined by a board of physicians consisting of the home physician and two others not connected with the home, any inmate who may be designated by the superintendent and the home physician, or by any member of the board of managers, as to the physical condition of such inmate, and if it be shown from said examination and report of said examining board that any inmate so examined has sufficiently recovered from his disabilities to be able to earn a living, such inmate shall be given an honorable discharge from the home, with transportation to the place from which he entered the home; provided, however, that such inmate be given twenty days notice of his dismissal, and that he be subject to all the rules and regulations governing the home during said twenty days, or such part of that time as he may remain in the home after said notice of dismissal be given. The two physicians assisting the home physician in such examinations shall be selected by the board of managers, and they shall be paid for such service two dollars and fifty cents each for each examination made by them; and that said board of managers shall also have charge of all the property received from the John B. Hood camp confederate veterans, or from any other source, for the maintenance of said home. Said board of managers shall make annual reports to the governor on the first day of each December, embracing a full statement of all expenditures and transactions of the institution for the fiscal year next preceding. They shall visit the home at least once each month.

Board of managers, term of office, duties, etc.
(Acts of 1891, page 14; Amend. 1895, p. 42.)

SUPERINTENDENT.

Art. 173. The said board of managers shall appoint a superintendent, who shall be an ex-confederate soldier, whose duties of office shall be the supervision of the affairs of said home, keeping the accounts of the same, and its general management, under the direction of the board of managers. He shall be under the control of and subject to removal (for cause, duly spread upon the records of said home) by said board, and unless sooner removed by said

Superintendent's term of office, duties, etc.
Ib.

board, for cause, shall hold his office for the term of two years, or until his successor shall be appointed and qualified.

In addition to his other duties he shall keep in a book prepared for that purpose the name and age of each inmate, date of admission to the home, the company and regiment or other command or capacity, in which the military service was performed, and the state from which he entered the service, and such other data concerning the history of the inmates as the board of managers may prescribe.

The superintendent of said home shall receive a salary of fifteen hundred dollars per annum.

APPLICATIONS FOR ADMISSION, ETC.

Applications for admission, etc.
Ib.; amend., 1896, p. 42.

Art. 174. All applications for admission to said home must show on the oath of applicant—

1. Name of applicant.
2. His age.
3. His residence (county and postoffice address).
4. The company, regiment, brigade and army in which he served.
5. That he is disabled and indigent, and is not receiving a pension from any source, and is now a bona fide citizen of Texas. And further (if he did not serve in a Texas command) that he was a bona fide resident of Texas on January first, 1895. Proof of the honorable service of applicant, as stated by himself, must be made by affidavit of two reputable persons, or by his written discharge, duly authenticated with sufficient proof of identity, or such other proof in manner and form as may be entirely satisfactory to the board of managers. The application must also be accompanied by a certificate of a regular practicing physician that the applicant is unable to provide a support for himself, giving the character of the disability, and that the applicant is not a lunatic and is not afflicted with any contagious or infectious disease.

All applications for admission to said home shall be referred to and passed upon by the board of managers.

VI. DEAF, DUMB, AND BLIND ASYLUM FOR COLORED YOUTHS.

Qualification and term of office of the superintendent for the asylum for colored youths.
(Acts of 1887, p. 150.)

Art. 175. The board of trustees of this asylum shall appoint a superintendent of said asylum, whose salary shall be fifteen hundred dollars per year. Said superintendent shall be a man of mature years and experience and familiar with the duties of the position to which he may be elected. He shall be under the control of and subject to removal by said board, and unless sooner removed by said board for cause shall hold his office for a term of two years.

Powers and duties of board of trustees, and regulations for asylum.
Ib.

Art. 176. The board of trustees shall make all necessary rules and regulations for the government of said asylum, said rules and regulations to comport as nearly as may be practicable with the rules and regulations of the asylums for like purposes in this state. Said board of trustees shall prescribe the duties of all subordinate officers or assistants in said asylum; shall appoint and may remove all such officers or assistants, determine their duties and their compensation; but said rules, appointments, and compensation shall not be in force until approved by the governor. The admission of all applicants to said asylum, their treatment, instruction, and continuance therein, all questions relating to their dismissal or removal, or voluntary departure from said asylum, or employment therein or thereabout, shall be governed by the rules and regulations of the state asylums for white youths for the deaf and dumb and blind.

CHAPTER THREE.

OF THE MODE OF FURNISHING CERTAIN SUPPLIES TO
THE ASYLUMS.

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Article 177. [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 such daily newspapers, not exceeding three in number, in Texas, as he may select for that purpose; provided, if a daily newspaper is published at or near the town or city where either of said asylums are situated, one paper shall be selected from said town or city, provided said paper charges the same price for advertising said bids as are charged by other papers selected prior to the day of opening said bids. Such advertisements shall state the articles for which bids shall be received, and bids shall be made separately as hereinafter named.

Art. 178. [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 the contract, and shall be liable to the state for any default of the same.

Art. 179. [145] On the day 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; provided, that he may reject any or all bids if in his judgment the interests of the state demands it.

Art. 180. [146] All bids shall be made for the term of three months, beginning September first of each year and quarterly thereafter.

Art. 181. [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.

Art. 182. [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, kraut, brooms, candles and oil, canned goods, alcoholic stim-

Advertisement for proposals.
(Act Aug. 19, 1876, p. 218, §1.)

Bidders must give bond.
Ib. §2.

Opening of bids.
(Act of 1891, p. 14.)

All bids for three months.
Ib. §4.

Superintendents to furnish detailed estimates.
Ib. §5.

Bids for what articles.
Ib. §6.

ulants 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.

Contractors,
how paid.
Ib. §7.

Art. 183. [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.

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

Art. 184. [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.

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

Art. 185. [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 182, 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.

TITLE X.

Attachment and Garnishment.

CHAPTER ONE.

ORIGINAL ATTACHMENT.

[For record of attachment liens, see title "Registration." For venue of damage suits in, see "Courts—District and County, Practice in."]

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Article 186. [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

Attach-
ments may be
issued by
whom.

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

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 pretenses.

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

Art. 187. [153] The affidavit shall further state—

1. That the attachment is not sued out for the purpose of injuring or harassing the defendant; and

2. That the plaintiff will probably lose his debt unless such attachment is issued.

Not to issue until suit begun.
(Act March 11, 1848.)
P. D. 165.

Art. 188. [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.

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

Art. 189. [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.

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

Art. 190. [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.

Bond to be approved and filed.

Art. 191. [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.

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

Art. 192. [158] The following form of bond may be used:

"The State of Texas,

"County of ———

"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."

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

Art. 193. [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.

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

Art. 194. [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.

Several writs.

Art. 195. [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.

Art. 196. [162] The following form of writ may be issued:
"The State of Texas,

Form of the writ.
Ib.
P. D. 163.

"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."

Art. 197. [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.

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

Art. 198. [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.

Duty of sheriff, etc.
P. D. 145.

Art. 199. [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.

May demand indemnity.
P. D. 151.

Art. 200. [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.

Property subject to attachment.

Art. 201. [167] The writ of attachment shall be levied in the same manner as is or may be the writ of execution upon similar property.

Levy, how made.

Art. 202. [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.

Personal property to remain in the hands of officer, unless.
P. D. 145.

Art. 203. [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 bond required by the provisions of the title relating to the trial of the right of property.

Claimant's bond and affidavit.
P. D. 5310.

Art. 204. [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.

Replevy by the defendant.
P. D. 150.

Sale of perishable property, etc.
P. D. 155.

Art. 205. [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. 206. [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.

Sale of perishable property, how made.
P. D. 155.

Art. 207. [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.

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

Art. 208. [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.

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

Art. 209. [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.

Return of the writ.

Art. 210. [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.

Requisites of the return.

Art. 211. [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.

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

Art. 212. [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.

Attachment creates a lien.

Art. 213. [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.

Art. 214. [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; provided, however, that when an attachment issued from a county or justice court has been levied upon land, no order or decree foreclosing the lien thereby acquired shall be necessary, but the judgment shall briefly recite the issuance and levy of such attachment, and such recital shall be sufficient to preserve such lien. The land so attached may be sold under execution after judgment and the sale thereof shall vest in the purchaser all the estate of the defendant in attachment in such land, at the time of the levy of such writ of attachment.

Judgment of
foreclosure.
(Acts of 1885,
p. 73.)

Art. 215. [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 prop-
erty is re-
plevied.

Art. 216. [182] Should the attachment be quashed or otherwise vacated by interlocutory judgment or order of the court, the court shall make the proper order making disposition of the property, or the proceeds of the sale thereof, if the same has been sold under order of the court directing that it be turned over to the defendant.

But the property or the proceeds of the sale thereof, if the same has not been replevied, shall remain in the hands of the officers pending the final disposition of the main case and until it shall be finally disposed of, or until the time for perfecting an appeal has elapsed and no appeal has been perfected, when said order disposing of the property shall be carried into effect; provided, that pending the final disposition of the main case the defendant shall have the right at any time to replevy the property in the same manner as is provided for in article 204 of this chapter, or if the property has been sold he may replevy the proceeds of such sale by giving a bond in double the amount of the money arising from such sale, with like conditions as are contained in article 204. And any replevy bond given in such case, whether before or after the quashing or vacating such attachment, shall be as valid and binding as if such attachment had never been quashed or vacated.

Order of court
when attach-
ment quashed;
pending
appeal may be
replevied.
(Acts of 1891,
p. 29.)

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 217. [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. 218. [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. 219. [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.

Art. 220. [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 anything, 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.

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

Art. 221. [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 company to subject shares, etc. (Act March 13, 1875, p. 102, §§1, 2.)

Art. 222. [188] The following form of writ may be used:
"The State of Texas,

Form of writ.

"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. 223. [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. 224. [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. 225. [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

Effect of service of writ; defendant may replevy. (Acts of 1889, p. 1.)

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 or 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; provided, however, that the defendant may at any time before judgment replevy any effects, debts, shares, or claims of any kind seized or garnished, by giving bond, with two or more good and sufficient sureties to be approved by the officer who issued the writ of garnishment, payable to the plaintiff, in double the amount of the plaintiff's debt, and conditioned for the payment of any judgment that may be rendered against the said garnishee in such suit, which bond when properly approved shall be filed among the papers in the cause in the court in which the suit is pending; and in all proceedings in garnishment where the defendant gives bond as herein provided for, such defendant may make any defense which the defendant in garnishment could make in such suit.

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

Art. 226. [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.

Garnishee to be discharged on his answer, when.

Art. 227. [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 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. 153.

Art. 228. [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 garnishee residing in another county fails to answer, commission to issue. P. D. 167.

Art. 229. [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 commission.

Art. 230. [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 after-

ward 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.”

Art. 231. [197] The commission shall be dated and tested as writs usually are. Tested, how.

Art. 232. [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 230. Duty of officer receiving commission. P. D. 167.

Art. 233. [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.”

Form of writ to be issued by commissioner for garnishee residing in another county.

Writ to be dated and tested, how. Sheriff, etc., to execute and return writ forthwith.

Art. 234. [200] The writ shall be dated and tested by the officer issuing it, with his official signature and seal of office.

Art. 235. [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.

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

P. D. 167.

Art. 236. [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 he fails to appear and answer.

P. D. 167.

Art. 237. [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.

Proceedings on return of certificate of such refusal to answer.

P. D. 167.

Art. 238. [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.

Judgment against the garnishee when he is indebted.

P. D. 157.

Art. 239. [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 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 effect.

P. D. 157.

Art. 240. [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. 241. [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 gar-

nishee 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.

Art. 242. [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.

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

Art. 243. [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.

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

Art. 244. [210] Such sale shall be valid and effectual to pass to the purchaser all 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.

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

Art. 245. [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.

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

Art. 246. [212] The defendant may also, in like manner, controvert the answer of the garnishee.

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

Art. 247. [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. P. D. 161.

Art. 248. [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.

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

Art. 249. [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.

Case to be docketed and notice to issue. P. D. 164.

Art. 250. [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.

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

Art. 251. [217] Upon the return of such notice served, an issue shall be formed under the direction of the court and tried as other cases.

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

Art. 252. [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.

Costs.

Art. 253. [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.

Garnishee dis-
charged from
liability to
defendant.

Art. 254. [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.

TITLE XI.
Attorney at Law.

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Article 255. [221] Any person who, in vacation, wishes to be allowed to practice as an attorney and counsellor 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 courts of criminal and civil appeals until the next regular term.

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

Art. 256. [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.

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

University graduates admitted to practice. (Acts of 1891, p. 23.)

Art. 257. [222a] Any person holding a diploma from the law department of the "University of Texas," and who desires to practice as an attorney and counselor at law in the courts of this state, may present such diploma to the district or supreme court in term time, together with a certificate of the commissioners' court of the county in which he resides, that he is a man of good moral character and honorable deportment, and such court shall thereupon order the clerk to issue a license to such applicant, which license shall be signed by the presiding judge of such court and tested by the seal of the court, which, if granted by the district court, shall authorize such applicant to practice in the district and inferior courts of the state, and if by the supreme court, then in all the courts of the state.

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

Art. 258. [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 255.

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

Art. 259. [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 courts of criminal or civil 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.

Oath of attorney. (Act Jan. 18, 1860, p. 25.) P. D. 172.

Art. 260. [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.

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

Art. 261. [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.

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

Art. 262. [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.

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

Art. 263. [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.

Art. 264. [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. 265. [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. 266. [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. 267. [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. 268. [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 order entered on the minutes, may suspend his license for a time or revoke it entirely, and may also give proper judgment for costs.

Judgment of the court.

Art. 269. [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.

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

Art. 270. [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.

Allowed to inspect papers. Ib. §12.

Art. 271. [236] No judge of the supreme court or court of criminal or civil 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.

Officers not allowed to appear as attorney. (Act Aug. 19, 1876, p. 216.) Ib. §8. P. D. 174.

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

Art. 272. [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. 273. [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. 274. [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 XII.

Attorneys--District and County.

CHAPTER ONE.

DISTRICT ATTORNEYS.

Legislature may provide for election of, etc..... Districts in which district attorneys shall be elected.....	Article 275 276	Bond and oath of..... Failure to attend court, shall forfeit, etc. Vacancy in office of, how filled, etc.....	Article 277 278 279
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Article 275. [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. 276. [241] The following judicial districts in the state shall each respectively elect a district attorney, viz.: First, second, third, fourth, fifth, sixth, seventh, eighth, ninth, twelfth, thirteenth, twentieth, twenty-first, twenty-second, twenty-third, twenty-fourth, twenty-fifth, twenty-seventh, twenty-eighth, twenty-ninth, thirtieth, thirty-first, thirty-second, thirty-third, thirty-fourth, thirty-fifth, thirty-sixth, thirty-seventh, thirty-eighth, forty-sixth, forty-seventh and fiftieth; also the twenty-sixth and fifty-third districts combined, and the criminal district composed of Galveston and Harris counties.

Art. 277. [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. 278. [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. 279. [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.

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COUNTY ATTORNEYS.

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Shall be no county attorney when there is a resident criminal district attorney.	283		

(Acts of 1883,
p. 2.)

Article 280. [245] A county attorney for counties in which there is not a resident criminal 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.

May appoint
assistants,
(Acts of 1891,
p. 91.)

Art. 281. [245a] County attorneys shall have power, by consent of the commissioners' court, to appoint in writing, one or more assistants, not to exceed three, for their respective counties, to continue in office during the pleasure of their principals, and who shall have the power and authority to perform all the acts and duties of their principals, and who shall have the qualifications prescribed by law for county attorneys; 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 upon his appointment, together with the certificate of the officer administering the same, and such appointments and oaths shall be recorded in the office of the county clerk, and deposited in said office.

Vacancy in
office of, how
filled.

Art. 282. [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.

No county at-
torney when
there is resi-
dent criminal
district attor-
ney.
(Acts of 1883,
p. 2.)

Art. 283. [247] When a resident criminal 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 there may be a resident criminal district attorney therein. By the term, criminal district attorney, is meant an attorney for a criminal district court.

Joint duties of
county and
district at-
torneys.
(Acts of 1879,
p. 94.)

Art. 284. 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.

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

Art. 285. [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 commission-

ers' 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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With consent of commissioners court, may sell property of county so purchased 293	To institute quo warranto proceedings... 302
Shall give receipt for money collected... 294	Admissions made by shall not prejudice the state..... 303

Article 286. [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.

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

Art. 287. [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.

Duties and powers of.

Art. 288. [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.

Residence of. Ib. §1.

Art. 289. [252] District and county attorneys shall notify the attorney-general and comptroller of public accounts of the county of their residence and of their postoffice address respectively, as soon after their election and qualification as practicable.

Shall notify attorney-general and comptroller of residence, etc. Ib. §1.

Art. 290. [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 clerk, 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.

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

Art. 291. In any case wherein any property shall be sold by virtue of any execution or order of sale issued upon any judgment in favor of the state, except executions issued upon judgments in cases of scire facias, the agent or attorney representing the state, by and with the advice and consent of the attorney-general of the state, is authorized and required to attend such sales, and bid on and buy in for the state said property, when it shall be deemed proper to protect the interest of the state in the collection of such judgment; provided, that in no case shall the amount bid by him exceed the amount necessary to satisfy said judgment and all costs due thereon.

With the consent of attorney-general to buy property. (Acts of 1879, p. 9.)

May sell prop-
erty bought
for state, with
consent of at-
torney-gen-
eral.
Ib.

Art. 292. The agent or attorney of the state buying for the state any such property at such sale, shall be authorized, by and with the advice and consent of the attorney-general, at any time to sell or otherwise dispose of said property so purchased, in the manner and upon such terms and conditions as he may deem most advantageous to the state; and if sold or disposed of for a greater amount than is necessary to pay off the amount due upon the judgment and all costs, the remainder shall be paid into the state treasury and placed to the credit of the general revenue; and when such sale is made the attorney-general shall, in the name of the state, execute and deliver to the purchaser a deed of conveyance to said property, which deed, when so signed by him, shall vest all the right and title to the same in the purchaser thereof.

May sell prop-
erty of county.
Ib.

Art. 293. When any such property is sold under execution or order of sale issued upon any judgment in favor of the county, including executions issued upon judgments in cases of scire facias in the name of the state, the attorney or agent so representing the county, by and with the advice and consent of the commissioners' court, shall have the same authority to buy in and dispose of such property for the county as the agent or attorney for the state is given in article 291 in similar cases; and when any property is so purchased by the agent or attorney of the county, the officer so selling the same shall execute and deliver to the county a deed of conveyance to the same; and whenever the property so bought in for the county is sold, the county commissioners' court shall execute and deliver to the purchaser thereof a deed of conveyance in the name of the county to such property.

Shall give re-
ceipt for mon-
ey collected.
(Acts 1876, p. 85,
§4. Act May
13, 1846.)

Art. 294. [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.

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

Art. 295. [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.

Shall report
collections for
county.
Ib. §6.

Art. 296. [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 pay
over money
collected in 30
days.
Ib. §§5, 6.

Art. 297. [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. Such district or county attorney shall be entitled to ten per cent commissions on the first thousand dollars collected by him in any one case for the state or county from any individual or company; and five per cent on all sums over one thousand dollars, to be retained out of the money when collected, and he shall also be entitled to retain the same commissions on all collections made for the state or for any county; provided, that ten per cent shall be allowed on all such sums heretofore collected since the adoption of the Revised Statutes. This article shall also apply to money realized for the state under the escheat law.

Art. 298. [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. 299. [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. 300. [260] When it shall come to the knowledge of any district or county attorney that any officer in his district or county, intrusted 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.)

Art. 301. It shall be the duty of the county attorney to sue for and recover the penalties against railroad companies for failing to keep in repair public crossings as prescribed in article 4435 of these statutes; and it shall be the duty of the county attorney, upon the making of an affidavit of the facts by any person, to at once institute against the company violating the provisions of said article 4435 suit in the proper court to recover such penalty or penalties, and his willful failure or refusal to do so shall be sufficient cause for his removal from office, unless it is evident that such suit could not have been maintained. The proceedings under said article shall be conducted in the same manner as civil suits, and the county attorney attending to such suits shall be entitled to a fee in each case of ten dollars, to be taxed as a part of the costs of the case; provided, that when two or more penalties are sought to be recovered in one and the same suit, but one such fee shall be allowed; and provided further, if the county be cast in the suit, no costs shall be charged against the county.

To sue for penalty against railroads. (Acts 1885, p. 45; amend., 1895, Sen. Jour., p. 478, §13.)

Art. 302. It shall be the duty of district and county attorneys to institute and prosecute quo warranto proceedings against persons and corporations in such cases and under such circumstances as are prescribed in article 4348 herein, and in such other cases as may be prescribed by law.

To institute quo warranto proceedings. (Acts of 1879, S. S., p. 43.)

Art. 303. [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, §13.) P. D. 193.

TITLE XIII.

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 304. [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. 305. [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. 306. [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. 221.

Art. 307. [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. 222.

Art. 308. [266] The obligee, or assignee, of any written instrument not negotiable by the law merchant, may transfer to another, by assignment, all the interest he may have in the same.

Art. 309. [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.

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

Art. 310. [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.

Waiver of diligence not to be shown by parol. (Act Jan. 25, 1840, p. 144, §7.) P. D. 225.

Art. 311. [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. 312. [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 1203 and 1204.

Assignor, indorser, etc., may be sued alone, when. *Ib.* §6. P. D. 225. (Act to adopt and establish R. C. S., passed Feb. 21, 1879.)

Art. 313. [271] When a suit shall be instituted by an 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. 314. [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. 315. [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 nonacceptance or nonpayment, 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. 316. [274] It shall be the duty of any notary public who shall protest any bill of exchange or promissory note, for nonacceptance or nonpayment, 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 postoffice by him, he shall

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

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.

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

Art. 317. [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.

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

Art. 318. [276] Three days of grace shall be allowed on all bills of exchange and promissory notes assignable or negotiable by law.

TITLE XIII. A.

Brands, Trade Marks, Etc.

Trade marks of carbonated goods.....	Article 318a	Infringements enjoined.....	Article 318c
Disposition of penalty funds.....	318b	Trade mark to be filed.....	318d

Article 318a. All manufacturers or dealers in carbonated goods, mineral waters, soda water, wine, cider, or other beverage, or manufacturers of medicine or other compound requiring the use of kegs, casks, barrels, boxes, syphons, bottles, or any other vessels for containers, upon which the names, brands, marks, or trade marks, or other designation of ownership or proprietorship is stamped, engraved, etched, blown in, impressed, or otherwise produced upon such boxes, syphons, bottles, or any other vessels for containers, may file in the office of the county clerk of the county in which the principal place or office of business is situated, a fac simile or description of the name or names, marks or devices, so used by such manufacturer or dealer in such wares herein enumerated, and cause such description to be published in a public newspaper published in such county for three successive weeks; and the act of so filing and causing to be recorded by the county clerk, and publishing, shall operate as a trade mark, securing to the said manufacturer the full protection of the law as a trade mark, entitling the said manufacturer to the sole and exclusive use in Texas of said mark, name, or device; for which services the clerk shall be allowed the sum of one dollar, to be paid by the party having such brands, etc., recorded.

Trade marks of carbonated goods, how established. (Acts 1893, p. 125.)

[Note—See penal code for penalties provided by this act.]

Art. 318b. All moneys collected as fines or penalty, under the provisions of this chapter, shall be returned by the justice of the peace into the county treasury, to become a part of the public road fund.

Disposition of penalty funds. Ib.

Art. 318c. Every person, association or union of workingmen, incorporated or unincorporated, having adopted a label, trade mark, design, device, imprint or form of advertisement, as aforesaid, may proceed by suit to enjoin the wrongful manufacture, use, display or sale of any such label, trade mark, design, device, imprint or form of advertisement, and the manufacture, use, display or sale of any such counterfeit or imitation, and all courts having jurisdiction thereof shall grant injunctions to restrain such manufacture, use, display or sale, and shall award the plaintiff in such suit such damages resulting from such wrongful manufacture, use, display or sale as by him may have been sustained. Where such association or union is not incorporated suits under this law may be commenced and prosecuted by any officer or member of such association or union in his own name, for himself and for the use and benefit of such association or union.

Infringement of trade mark may be enjoined. (Act 1895, p. 108.)

Art. 318d. Every person, association or union of workingmen, incorporated or unincorporated, that has heretofore or shall hereafter

Trade mark to be filed, etc. Ib.

adopt a label, trade mark, design, device, imprint or form of advertisement, shall file the same in the office of the secretary of state by leaving two copies, counterparts or fac similes thereof, with the secretary of state, and said secretary shall deliver back to such person, association or union so filing the same one of said copies, counterparts or fac similes, along with and attached to a duly attested certificate of the filing of same, for which he shall receive a fee of one dollar from such person, association or union. Such certificate of filing shall in all suits and prosecutions under this chapter be sufficient proof of the adoption of such label, trade mark, design, device, imprint or form of advertisement, and of the right of such person, association or union to adopt the same. No label, trade mark, design, device, imprint or form of advertisements shall be filed as aforesaid that would probably be mistaken for a label, trade mark, design, device, imprint or form of advertisement already of record; provided, that no person or associations shall be permitted to register as a label, trade mark, design, device, imprint or form of advertisement, any emblem, design or resemblance thereto that has been adopted or used by any charitable, benevolent or religious society or association without their consent, and provided, further, that all persons, institutions or associations now using a label, trade mark, design, device, imprint or form of advertisement shall have thirty days time after this law takes effect in which to file such label, trade mark, design, device, imprint or form of advertisement under the provisions of this law, before the same can be registered by others.

TITLE XIV.

Carriers.

[See titles "Railroads," "Express Companies."]

CHAPTER ONE.

DUTIES AND LIABILITIES OF CARRIERS.

	Article		Article
Common law shall govern, except, etc.	319	Liability as warehousemen, etc.	323
Carriers can not limit their responsibilities	320	Diligence as to delivery	324
Bound to convey goods, when	321	Shall forward in good order, etc.	325
Must give bill of lading	322	Shall feed and water live stock, unless, etc.	326

Article 319. [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. Common law shall govern, except, etc.

Art. 320. [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. Carriers can not limit their responsibility. (Act Dec. 4, 1863.) P. D. 452.

Art. 321. [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 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; provided, this article shall not affect such corporations as are embraced in article 4496 of these statutes. Bound to carry goods, when. Ib. §453; (amend., 1895, Sen. Jour., p. 478, §14.)

Art. 322. [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 consignee, the unavoidable wear and tear and Must give bill of lading. (Act Feb. 4, 1860.) Ib. 454.

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.

Liability as warehousemen, etc.
Ib. 455.

Art. 323. [281] Railroad companies, and other common carriers having depots and 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.

Diligence as to delivery.
Ib.

Art. 324. [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.

Shall forward in good order, etc.
Ib.

Art. 325. [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 feed and water live stock.

Art. 326. [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.

CHAPTER TWO.

DISPOSITION OF UNCLAIMED OR PERISHABLE PROPERTY BY CARRIERS.

	Article	Article
Unclaimed freight may be sold, when and how.....	327	Carrier may sell live stock, when..... 330
Notice of such sale.....	328	Carriers shall sell perishable property, when
Carrier shall keep an account of sales, etc	329	331

Unclaimed freight may be sold, when and how.
(Act May 2, 1874, p. 203.)
P. D. 5881a.

Article 327. [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.

Art. 328. [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 the owner any time within five years, on proof of ownership made by the claimant or his duly authorized agent or attorney.

Notice of such sale.
Ib.
P. D. 5834b.

Art. 329. [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.

Carrier shall keep an account of sales, etc.
Ib.
P. D. 5835c.

Art. 330. [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 328, 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 may sell live stock, when.
Ib.
P. D. 5834d.

Art. 331. [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 328, 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.

Carrier shall sell perishable property, when.
Ib.
P. D. 5834d.

CHAPTER THREE.

CONNECTING LINES OF COMMON CARRIERS.

Connecting lines of common carriers defined	rticle 331a	Liability of such connecting lines.....	Article 331b
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Article 331a. All common carriers over whose transportation lines, or parts thereof, any freight, baggage or other property received by either of such carriers for through shipment or transportation by such carriers between points in this state on a contract for through carriage recognized, acquiesced in or acted upon by such carriers shall, in this state, with respect to the undertaking and matter of such transportation, be considered and construed to be con-

Connecting lines of common carriers defined.
(Acts 1895, p. 186.)

necting lines, and be deemed and held to be the agents of each other, each the agent of the others, and all the others the agents of each, and shall be deemed and held to be under a contract with each other and with the shipper, owner and consignee of such property for the safe and speedy through transportation thereof from point of shipment to destination; and such contract as to the shipper, owner or consignee of such property shall be deemed and held to be the contract of each of such common carriers; and in any of the courts of this state any through bill of lading, waybill, receipt, check or other instrument issued by either of such carriers, or other proof showing that either of them has received such freight, baggage or other property for such through shipment or transportation, shall constitute prima facie evidence of the subsistence of the relations, duties and liabilities of such carrier as herein defined and prescribed, notwithstanding any stipulations or attempted stipulations to the contrary by such carriers, or either of them.

Liability of
such connect-
ing lines.
Ib.

Art. 331b. For any damages for injury or damage to or loss or delay of any freight, baggage or other property sustained anywhere in such through transportation over connecting lines, or either of them, as contemplated and defined in the next preceding article of this law, either of such connecting carriers which the person or persons sustaining such damages may first elect to sue in this state therefor shall be held liable to such person or persons; and such carrier so held liable to such person or persons shall be entitled in a proper action to recover the amount of any loss, damage or injury it may be required to pay such person or persons from the carrier through whose negligence the loss, damage or injury was sustained, together with costs of suit.

TITLE XV.

Certiorari.

CHAPTER ONE.

CERTIORARI TO THE COUNTY COURT.

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Writ to issue, to contain what.....	336		

Article 332. [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. 333. [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. 334. [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. 335. [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.

Art. 336. [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. 337. [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.

Citation as in ordinary cases.

Art. 338. [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.

Trial de novo: judgment to be certified below. (Act May 13, 1846, p. 363, §60.)
P. D. 1460.

Art. 339. [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.

Appeals and writs of error allowed.

Art. 340. [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.

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Certiorari to justices' court. (Acts of 1879, p. 125.)

Article 341. [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 to the county court by writ of certiorari (or if the jurisdiction, civil or criminal, has been transferred from the county to the district court, then to the district court) in the manner hereinafter directed.

On order of the county or district court or judge.

Art. 342. [300] The writ of certiorari shall be issued by order of the county court or the judge thereof (or district court or the judge thereof if jurisdiction is transferred to said district court, as provided in the preceding article).

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

Art. 343. [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 proper 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.
Ib.

Art. 344. [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.

What application for certiorari must show.
Ib.

Art. 345. [303] In order to constitute a sufficient cause, the facts stated must show that either 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.

Within what time granted.
Ib.

Art. 346. [304] Such writ shall not be granted after ninety days from the final judgment of the justice of the peace.

- Art. 347. [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 or district court, if the same shall be against him. Bond with sureties required. Ib.
- Art. 348. [306] The bond and affidavit, with the order of the judge when made in vacation, shall be filed with the clerk of the court to which the same is returnable. Bond, affidavit and order to be filed.
- Art. 349. [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 343. Writ to issue instant. (Act May 10, 1850, p. 60, §2.) P. D. 470.
- Art. 350. [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. §67. P. D. 468.
- Art. 351. [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. 352. [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. 353. [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 sufficient bond. Motion to dismiss at first term.
- Art. 354. [312] No amendment of the affidavit or bond shall be made in the county or district court, nor shall a new affidavit or bond be filed. No amendment of bond or oath.
- Art. 355. [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. 356. [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. 357. [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. 358. [316] Either party may plead any new matter in the county or district 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. 359. [317] The cause shall be tried de novo, in the county or district 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. 360. [318] Appeals and writs of error from the judgments of the county or district court, in cases of certiorari from justices' courts, shall be allowed, subject to such rules and limitations as apply in cases appealed from justices' courts. Appeals and writs of error in certiorari cases.

TITLE XVI.

Cession of Lands to the United States.

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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 361. [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 lighthouses, forts, military stations, magazines, arsenals, dock-yards, custom-houses, postoffices 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. 362. [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. 363. [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. 364. [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. 365. [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.

Art. 366. [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.

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

Art. 367. [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. 368. [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. 369. [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 having jurisdiction over said 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. 12.)
P. D. 5448.

Art. 370. [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 paper be published in the county, then in the newspaper published nearest to said county.

Citation by publication to persons interested.
Ib.

Art. 371. [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. 372. [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, 1854, p. 102.)
P. D. 5450.

Art. 373. [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

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

to which such county may be attached for such purpose; and until filed for record in the proper county, they shall not take effect as to subsequent purchasers in good faith, for a valuable consideration, and without notice.

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

Art. 374. [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. 375. [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. 376. [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 XVII.

Change of Name.

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trict court.....	377	In divorce suits, name may be changed..	380
Minors apply, by guardian.....	378		

Article 377. [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. 378. [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. 379. [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 or property or action which the person had or held in his original name.

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

Art. 380. [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 XVIII.
Cities and Towns.

CHAPTER ONE.

GENERAL PROVISIONS RELATING TO CITIES.

Article	Article
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Provisions of this title do not apply until accepted.....	Validating provision.....
382	386
General powers of the corporation.....	Territorial boundaries of cities and towns.....
383	386a
Limits of the corporation to remain the same until extended, etc.....	Excessive territory to be relinquished.....
384	386b
	Validating certain incorporations.....
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	Discontinuing territory.....
	386d

Cities, towns and villages may accept provisions of this title. (Acts of 1881, p. 115.) (Acts of 1885, p. 57.)

Article 381. [340] Any incorporated city, town or village in this state, containing one thousand inhabitants or over, including those incorporated under chapter eleven of this title, and other laws, general and special, may accept the provisions of this title in lieu of any existing charter, by a two-thirds vote of the council of such city, town or village, which action by the council shall be had 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 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, town or village is situated, and the provisions of this title shall be in force, and all acts theretofore passed incorporating said city, town or village which may be in force by virtue of any existing charter, shall be repealed from and after the filing of said copy of their proceedings as aforesaid. When such city, town or village is so incorporated as herein provided, the same shall be known as a city or town, subject to the provisions of this title relating to cities and towns and vested with all the rights, powers, privileges, immunities and franchises therein conferred.

Provisions of this title do not apply until accepted. (Act March 15, 1875, p. 256, §167.)

Art. 382. [341] The provisions of this title shall not apply to any city, town or village until such provisions have been accepted by the council in accordance with the preceding article.

General powers of the corporation. Ib. §2.

Art. 383. [342] All the inhabitants of each city, town or village 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, town or village 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 the same 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 the same 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. 384. [343] The bounds and limits of said municipality 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 in the manner provided in article 574 of this title.

Limits of corporation to remain the same until extended, etc.
1b. §2.

Art. 385. Any city or town containing one thousand inhabitants or over may be incorporated as such, with all the powers, rights, immunities and privileges mentioned and described in the provisions of this title relating to cities and towns in the manner prescribed in chapter eleven of this title for incorporating towns and villages, except that the application to become incorporated shall be signed by at least fifty electors, residents of such city or town, and except that when an election is held according to the provisions of such chapter the words "towns and villages" shall be construed to read and read "cities and towns." When the entry by the county judge, provided in article 586 in said chapter eleven, is made with reference to a city or town of one thousand inhabitants and over, such city or town shall be invested with all the rights and privileges of such cities conferred by this title.

Cities, towns and villages may incorporate under, (Acts of 1881, p. 63.) (Acts of 1881, p. 115.)

Art. 386. [340c] That all towns and cities of one thousand inhabitants or more which have heretofore attempted to accept the provisions of this title and to become incorporated cities of one thousand inhabitants or more, under the general laws of Texas, and have failed to comply with all the requirements of said general law, or which are not included within the literal meaning of those cities which are authorized to accept the provisions of said general law, and all towns and villages incorporated under chapter eleven of title eighteen of the Revised Civil Statutes or by special charter or otherwise, but which now have one thousand inhabitants or more, and which have heretofore attempted to accept the provisions of this title in lieu of their said town or village charter and become incorporated cities of one thousand inhabitants or more; but which said cities have from and after the dates of their several attempted incorporations and their several efforts to accept the provisions of this title exercised the functions of cities of the class named, and were by the state of Texas recognized as such cities, be and the same are hereby declared to be cities of one thousand inhabitants or more, and the several acts whereby they attempted to accept the provisions of said law are hereby in all things validated. And that all subsequent acts of said cities and towns done and performed as a city of one thousand inhabitants or more, after they had attempted to accept the pro-

Validating incorporations (Acts of 1891, p. 26.)

visions of said law as aforesaid, be and the same are hereby validated and declared to be as binding as if said cities had been duly and legally incorporated; provided, that nothing herein shall be construed as validating any act of said cities or the councils thereof, unless same were authorized by the general laws of the state under which they were attempting to act, at the several dates when said acts were done; and provided further, that the provisions of this article shall not validate the act of any town or city in unlawfully adding additional territory to such town or city, without the consent of such inhabitants so added to said town or city.

Territorial boundaries of cities and towns, etc. (Acts of 1895, p. 17.)

Art. 386a. No city or town in this state shall be hereafter incorporated under the provisions of the general charter for cities and towns contained in title eighteen of the Revised Civil Statutes of this state with a superficial area of more than two square miles when such town or city has less than two thousand inhabitants, nor more than four square miles when such city or town has more than two thousand and less than five thousand inhabitants, nor more than nine square miles when such city or town has more than five, and less than ten thousand inhabitants. It shall be the duty of the mayor and board of aldermen immediately after they qualify as such officers to pass an ordinance causing an actual survey of the boundaries of such town to be made according to the boundaries designated in the petition for incorporation, and the field notes thereof recorded in the minute book of such town or city, and also in the record books of deeds in the county in which such town or city is situated.

Excessive territory to be relinquished. Ib.

Art. 386b. It shall be the duty of the mayor and the board of aldermen of any town or city in this state heretofore incorporated under the above named title eighteen of the Revised Civil Statutes of this state, and whose boundaries have been established so as to include more territory than is specified in article 386a, to immediately cause a resurvey of the boundaries of such city or town to be made, so as not to include more territory than is provided for in article 386a. Such resurvey to be made and the field notes thereof to be recorded as provided in article 386a.

Validating certain incorporations. Ib.

Art. 386c. All cities and towns in this state whose charter may be void by reason of a failure to properly define their limits, or that may have included in such limits more territory than is provided for in article 386a, that shall, within ninety days from the taking effect of this law, comply with article 386b, be and such charter and incorporation are hereby in all things validated, the same as if such territorial limits had at first been properly established.

Discontinuing Territory. (Act of 1895, p. 178.)

Art. 386d. Whenever there exists within the corporate limits of any city or town organized under the general laws within this state, territory to the extent of at least ten acres, contiguous, uninhabited, and adjoining the lines of any such city or town, the mayor and city or town council may by ordinance duly passed discontinue said territory as a part of said city or town; and when said ordinance has been duly passed, the mayor shall enter an order to that effect on the minutes or records of the city or town council, and from and after the entry of such order said territory shall cease to be a part of said city or town.

CHAPTER TWO.

OFFICERS AND THEIR ELECTION.

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Article 387. [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; provided, that where the city or town shall not be divided into wards, the city council shall be composed of the mayor and five aldermen, and the provisions of this title relating to proceedings in a ward shall apply to the whole city or town. 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; provided, that the office of treasurer, assessor and collector, city attorney, and city engineer may be dispensed with by an ordinance of the city or town council, and the powers and duties herein prescribed for such officers may be conferred by said council upon other officers. 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 consists of, what. (Acts of 1881, p. 115.)

Art. 388. [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, and 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 presid-

Manner of electing officers, etc.

ing 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.

Election, etc.,
of mayor and
aldermen.
(Acts of 1895,
p. 3.)

Art. 389. [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 two years from the date of his election, and until his successor shall be elected and qualified; and at the first election held under this title there shall be elected by the qualified voters of said city two aldermen from each ward in said city, 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 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 said 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; and provided, further, that where the city or town shall not be divided into wards the city council may determine by proper ordinance what number of aldermen shall go out of office in one year and the mode and manner of deciding which members shall hold for the long term and which for the short term.

Time of hold-
ing election
and returns
thereof.
ib.

Art. 390. [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 returned 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 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 for aldermen of the several wards as hereinbefore provided for; and the persons receiving the highest number of votes for the office of mayor, city attorney, tax assessor and collector, treasurer, city marshal, city engineer, secretary, and aldermen shall be declared elected to their respective offices; provided, that at the first election held under this statute the two persons from the same ward receiving

the highest number of votes in the city for aldermen of the wards for which they are candidates, shall be declared elected aldermen of such wards respectively in which they were candidates; and at all subsequent elections held thereunder only one alderman shall be elected from each ward by the qualified voters of such town or city. The newly elected officers may enter upon their duties on the fifth day thereafter, Sundays excepted; provided, that any officer may qualify at any time within thirty days after his election, otherwise the office shall be deemed vacant, and a new election held to fill the same. It shall be the duty of the 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.

Art. 391. [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.

Who are qualified voters for city officers.
(Act March 15, 1875, p. 256, §7.)

Art. 392. [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. 393. [349a] In any election, state, county or municipal, being held in any city or town of ten thousand inhabitants or more according to the last preceding United States census, when the right to vote of any elector offering to vote is challenged the following proceedings shall be had: The judges of election shall refuse to accept such vote of such elector unless in addition to his own oath, he proves by the oath of one well known resident of the ward, that he is a qualified voter at such election and in such ward. When such vote is accepted the judges shall cause the clerk of election to make a minute of the name of the elector and the party testifying under oath as to his qualifications, and such memoranda shall be kept by the clerk of the county court for six months after such election is held, subject to the order of the district judge. Whenever the right of an elector to vote is challenged the word "challenged" shall be entered on the ballot if accepted by the judges. Any elector voting at any election who does not possess the legal qualifications shall be punished as now provided by law for illegal voting, and any person swearing falsely as to his own qualifications or those of a challenged elector, shall be punished as now provided by law for false swearing.

Proceedings where vote challenged.
(Acts of 1891, p. 47.)

Art. 394. [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

Proceedings in case of a tie vote, etc.
(Act March 15, 1875, p. 256, §9.)

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.

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

Art. 395. [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.

Vacancy, how filled.
(Acts of 1887, p. 41.)

Art. 396. [352] In case of a vacancy in the office of mayor or alderman, 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. In case of a vacancy in any other office in the city than mayor or alderman, by refusal to accept or failure to qualify, or by death, resignation or otherwise, the mayor or acting mayor shall fill such vacancy by appointment to be confirmed by the city council.

Election to fill vacancies may be ordered by county judge, when.
Ib.
(Act March 15, 1875, p. 256.)

Art. 397. [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 tax-payers, 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, etc., in such case, how conducted, etc.
Ib. §2.

Art. 398. [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.

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

Art. 399. [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 tempore, who shall hold his office for one year. In case of the failure, inability or refusal of the mayor to act, the president pro tempore shall perform the duties and receive the fees and compensation of the mayor.

CHAPTER THREE.

DUTIES AND POWERS OF OFFICERS.

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Article 400. [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.

Officers shall take official oath. Ib. §13.

Art. 401. [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, and until such election and qualification he shall perform all the duties required of recorder in article 405 of this chapter; provided, however, that this article shall not operate to affect the organization of any city or town already chartered by general or special charter, nor to require any new election of the officers of such chartered cities and towns.

Duties of mayor. (Acts of 1881, p. 115, §1.) (Acts of 1881, p. 115, §2.)

Art. 402. [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

Mayor may summon citizens to act as a special police force, etc. (Act March 15, 1875, p. 256, §15.)

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. 403. [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.

Ordinances
and resolu-
tions adopted
shall not take
effect until,
etc.
Ib. §17.

Art. 404. [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.

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

Art. 405. [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 corporation. 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 fines 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 for fines, of whatever 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.

Art. 406. [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.

Right of trial
before jury.
Ib. §19.

Art. 407. [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 au-

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

thority 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. 408. [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.

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

Art. 409. [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.

Art. 410. [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 nonpayment 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.
Ib. §23.

Art. 411. [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.
Ib. §24.

CHAPTER FOUR.

GENERAL POWERS AND DUTIES OF THE CITY COUNCIL.

[For authority to issue bonds by counties and cities, etc., see title "Counties and Towns."]

Article	Article		
City council, who shall preside over it, etc.	412	May direct the location of certain establishments, etc.	451
Shall hold stated meetings, may call special meetings, petitions, etc., to, etc.	413	May regulate the burial of the dead, etc.	452
Shall control the finances and property.	414	May define nuisances and punish persons guilty thereof, etc.	453
Power to appropriate money, etc.	415	May establish, etc., workhouses, etc.	454
Power to provide special fund for special purposes, etc.	416	May compel convicts to labor on streets, etc.	455
May make health and quarantine regulations	417	To regulate the hiring of convicts.	456
May provide the city with water, establish wells, pumps, etc.	418	May prevent trespasses, etc., and punish offenders	457
Power over streets, alleys, grounds, etc., of city.	419	May prevent and punish the keeping of disorderly houses, etc.	458
May establish, etc., and keep in repair, bridges, etc.	420	May require owner of drain, sink, etc., to fill up, cleanse, etc., the same, and punish for failure to do so.	459
May provide lights for the city.	421	May control laying of railroad track, etc.	460
May establish market, etc.	422	May tax and regulate street railroads.	461
May improve public grounds, cemeteries, etc.	423	May prevent, etc., dead animals, etc., being deposited within city limits.	462
May establish hospitals, etc.	424	May prevent, etc., the driving of animals into or through the city.	463
May regulate the carrying of weapons.	425	Power to pass, etc., ordinances, etc., and other powers.	464
May prevent the incumbering of the streets, etc., and cause unsafe buildings to be removed, etc.	426	May pass ordinances to fund debt, etc.	465
May license, tax, etc., certain occupations	427	Power over the finances of the city.	466
May license, etc., peddlers, theaters, etc.	428	City bonds shall specify what, etc.	467
May license, etc., circuses, etc.	429	Bonds shall be signed, etc., and payable, when and where.	468
May license, etc., hackmen, and provide their compensation, etc.	430	Bonds shall be registered in comptroller's office.	469
May license, etc., billiard tables, etc.	431	Mayor shall furnish statement to comptroller, duties of comptroller.	470
May authorize proper officers to grant license, etc.	432	May compromise debts and issue bonds.	471
May establish a free library.	433	Debts barred by the statute of limitation can not be compromised.	472
May restrain, etc., the sale of intoxicating liquors.	434	Bonds exempt from taxation, and may be used to pay certain taxes.	473
May close drinking houses, etc., on Sundays	435	Form of bonds and how executed, must be registered at office of state comptroller	474
May prevent sale of liquor in certain places	436	Bonds, when issued, how disposed of; restrictions upon the same.	475
May regulate butchers, etc.	437	Tax laws to remain in force.	476
May regulate inspection, etc., of provisions, etc.	438	All laws for collecting tax retained, and defenses to bonds cut off.	477
May regulate weight and quality of bread	439	Tax collector's liability; governor to appoint collector, when.	478
May create and regulate police.	440	The method of arranging a compromise.	479
May suppress, etc., riots, etc.	441	Receiver of corporation may be appointed	480
May prevent horse racing, abuse of animals, etc.	442	Cities and towns may also compromise debts, etc., issue bonds, as elsewhere provided	481
May punish vagrants, etc.	443	Gulf cities may issue bonds for harbors, etc.	482
May establish public pounds, etc.	444	Tax to be levied, interest to be paid, and bonds sold, etc.	483
May tax, etc., dogs.	445	May dispense with office of city marshal.	483a
May prohibit, etc., the firing of arms, etc., the use of velocipedes, ringing of bells, etc.	446		
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May do, etc., to promote health and suppress disease.	448		
Sanitary regulations by cities and counties	449		
May compel the cleansing of certain places	450		

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

Article 412. [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 tempore, any one of the aldermen may be appointed to preside.

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

Art. 413. [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. 414. [370] The city council shall have the management and control of the finances and other property, real, personal and mixed, belonging to the corporation.

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

Art. 415. [371] The city council shall have power to appropriate money, and provide for the payment of debts and expenses of the city.

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

Art. 416. [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.

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

Art. 417. [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. 418. [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. 419. [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 and otherwise improve said streets; to put drains or sewers therein, and to prevent the encumbering thereof in any manner, and to protect the same from encroachment or injury; and to cause all able-bodied male inhabitants above eighteen years of age, except ministers of the gospel, to work thereon not exceeding five days in any one year, or furnish a substitute or a sum of money (not to exceed one dollar for each day's work demanded) to employ said substitute, and to enforce the same by appropriate ordinances; and to regulate and alter the grade of premises, and to require the filling up and raising of the same; and such city council shall also have power to alter or vacate the alley in any block of ground within the city, upon the written application of the owner of the block, or if there be more than one owner of such block, then upon the written application of all the owners thereof uniting in such application, and such alley so vacated shall thereupon revert to and become the property of the owner of the block of which it was a part, or if more than one, then to the owners of the adjoining lots therein, each extending to the center of the alley so vacated.

Control of streets, alleys, etc.
(Acts of 1889, p. 1.)

Art. 420. [376] To establish, erect, construct, regulate and keep in repair bridges, culverts and sewers, sidewalks and cross-ways, and to regulate the construction and use of the same, and to abate and punish any obstructions or encroachments thereon; and

May establish, etc., and keep in repair bridges, etc.
(Act March 15, 1875, p. 256, §33.)

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

Art. 421. [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 establish market, etc.
Ib. §34.

Art. 422. [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 improve public grounds, cemeteries, etc.
Ib. §36.

Art. 423. [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 establish hospitals, etc.
Ib. §37.

Art. 424. [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 regulate the carrying of weapons.
Ib. §38.

Art. 425. [381] To regulate the carrying of weapons, and to prevent the carrying of the same concealed.

May prevent the incumbering of streets, etc., and cause unsafe buildings to be removed, etc.

Art. 426. [382] To prevent the incumbering 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 same.

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

Art. 427. [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. 428. [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. 429. [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. 430. [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.

Art. 431. [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 license, etc., billiard tables, etc.
Ib. §44.

Art. 432. [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 authorize proper officer to grant license, etc.
Ib. §45.

Art. 433. [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 establish, etc., a free library. (Act Feb. 26, 1874, p. 13, §1.)

Art. 434. [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 restrain, etc., the sale, etc., of intoxicating liquors. (Acts of 1875, p. 256, §46.)

Art. 435. [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 close drinking-houses, etc., on Sunday.
Ib. §47.

Art. 436. [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 prevent sale of liquors in certain places.
Ib. §48.

Art. 437. [393] To make such rules and regulations in relation to butchers as they may deem necessary and proper.

May regulate butchers, etc.
Ib. §49.

Art. 438. [394] To regulate the inspection of beef, pork, flour, meal, salt and other provisions, whisky and other liquors to be sold in barrels, hogsheads 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. 439 [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. 440. [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. 441. [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. 442. [398] To prevent, prohibit and suppress horse-racing, immoderate riding or driving in the streets; to prohibit and punish

May prevent, etc., horseracing, abuse of animals, etc.
Ib. §54.

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 punish
vagrants, etc.
Ib. §55.

Art. 443. [399] To restrain and punish vagrants, mendicants, street beggars and prostitutes.

May establish
pounds, etc.
Ib. §56.

Art. 444. [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 tax, etc.,
dogs.
Ib. §57.

Art. 445. [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 prohibit,
etc., the firing
of arms, etc.,
the use of
velocipedes,
ringing of
bells, etc.
Ib. §58.

Art. 446. [402] To prohibit and restrain the firing of fire-crackers, guns and pistols, use of velocipedes, or use of any pyrotechnic or any other amusements 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 abate
nuisances.
Ib. §59.

Art. 447. [403] To abate all nuisances which may injure or affect the public health or comfort in any manner they may deem expedient.

May do, etc.,
to promote
health and
suppress
disease.
Ib. §60.

Art. 448. [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.

Sanitary regu-
lations by cit-
ies and coun-
ties.
(Acts of 1879,
p. 9.)

Art. 449. To co-operate with the commissioners' court of the county in which the municipality is situated in making such improvements as may by it and said court be deemed necessary to improve the public health and promote efficient sanitary regulations, and to arrange for the construction of and payment for said improvements.

May compel
the cleansing
of premises.
Ib. §61.

Art. 450. [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 direct
the location of
certain estab-
lishments, etc.
Ib. §62.

Art. 451. [406] To direct the location of business, tanneries, blacksmith shops, foundries, 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 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. 452. [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.

Art. 453. [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 define nuisances and punish persons guilty thereof, etc. *Ib.* §64.

Art. 454. [409] To erect and establish one or more workhouses 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 workhouse 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 establish, etc., workhouses, etc. *Ib.* §65.

Art. 455. [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 compel convicts to labor on streets, etc. *Ib.* §66.

Art. 456. [410a] To compel any person who may be convicted of a violation of any of the ordinances of the city, and who may be committed to jail in default of the payment of the fine and costs adjudged against such person, to be hired out to any individual, company or corporation within the county in which said conviction is had (and to remain in said county), for the purpose of paying off and discharging said fine and costs, under such regulations as may be prescribed by ordinance; and to pass such ordinances as may be necessary to the regulation and enforcement of said contract of hiring.

Regulate hiring of convicts. (Acts of 1887. p. 136.)

Art. 457. [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 trespasses, etc., and punish offenders. (Acts of 1875. p. 256. §67.)

Art. 458. [412] To prevent and punish the keeping of houses wherein indecent, loud or immodest dramatic or theatrical representations are given, houses of prostitution within the city, and to adopt summary measures for the removal or suppression of all such establishments.

May prevent and punish the keeping of disorderly houses, etc. *Ib.* §68.

Art. 459 [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 require owner of drain, sink, etc., to fill up, cleanse, etc., the same, and punish for failure to do so. *Ib.* §69.

Art. 460. [414] To direct and control the laying and constructing of railroad tracks, turnouts and switches, or prohibit the same, in the streets, avenues and alleys, unless the same have been au-

May control, etc., the laying of railroad tracks, etc. *Ib.* §70.

thorized by law, and the location of depots within the city; to require that railroad tracks, turnouts 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.

May tax and regulate street railroads.
Ib. §71.

Art. 461. [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 prevent, etc., dead animals, etc., being deposited within city limits.
Ib. §72.

Art. 462. [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., the driving of animals into or through the city.
Ib. §73.

Art. 463. [417] To prevent, regulate and control the driving of cattle, horses and all other animals into or through the city.

Power to pass, etc., ordinances, etc., and other powers.
Ib. §74.

Art. 464. [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, workhouse, 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 workhouse, 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.

Art. 465. [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 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.

May pass ordinances to fund debt, etc.
Ib. §75.

Art. 466. [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, waterworks, 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.

Power over the finances of the city.
Ib. §76.

Art. 467. [421] All bonds shall specify for what purpose they were issued, 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; provided, however, that said sinking fund may, as it accumulates, be invested in bonds of the United States, the state of Texas, or counties in said state; and the city treasurer shall honor no draft upon said fund except to pay interest upon or to redeem the bonds for which it was provided, or for investment in other securities as above provided.

City bonds shall specify, what.
(Acts of 1889, p. 2.)

Art. 468. [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 signed, etc., and payable where and when, etc.
(Acts of 1875, p. 256, §78.)
Bonds shall be registered in comptroller's office.
Ib. §79.

Art. 469. [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. 470. [424] 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.

May compromise debts and issue bonds. (Acts of 1887, p. 50.)

Art. 471. The mayor and board of aldermen are authorized and empowered, by resolution or ordinance of said board of aldermen by referring to this and the succeeding articles of this chapter relating hereto and adopting the same, to compromise and fund any existing valid indebtedness by the city or town issued, whether bonded or floating, and the coupons due upon the bonded debt; and for this purpose they are authorized and empowered to issue new bonds, in denomination of not less than fifty nor more than one thousand dollars, in their discretion, with interest coupons payable semi-annually at the office of the state treasurer or at such other place as said board of aldermen shall provide; said new bonds to become due and payable in not exceeding thirty years, and to bear such rate of interest, not exceeding six per cent per annum, as in their discretion may best subserve the purpose intended.

Barred debts cannot be compromised.
Ib.

Art. 472. No compromise shall be made under the provisions of this chapter, by which any debt shall be funded which is barred by the statute of limitations.

Bonds exempt from taxation and may be used to pay taxes.
Ib.

Art. 473. The new bonds thus issued by any city or town shall be exempt from the payment of all taxes levied by such city or town, and the taxes levied to pay said new bonds may be paid in said bonds or coupons thereof if matured; provided, that said coupons and bonds shall only be received in payment of taxes levied for the purpose of paying such bonds and coupons.

Bonds when executed must be registered with comptroller.
Ib.

Art. 474. The mayor and board of aldermen shall cause to be prepared the necessary blank bonds to give effect to the provisions of this chapter, the cost of which shall be paid out of the treasury of such city or town; said bonds when issued by any city or town shall be signed by the mayor and attested by the secretary (or recorder if there be no secretary), with the seal of such city or town affixed; and such new bonds shall be registered in the office of the state comptroller.

Bonds when issued, how disposed of, etc.
Ib.

Art. 475. Such new bonds may be exchanged for the old bonds, or they may be sold and the proceeds applied to the purchase of such old bonds; provided, that no delivery of such new bonds shall take place unless a contract has already been entered into for the purchase of a corresponding amount of such old bonds; and provided further, no bonds issued under this chapter as a compromise of existing indebtedness shall be sold at less than par, and each bond shall be made to bear the lowest rate of interest that will give a par value.

Art. 476. All laws in force providing for the collection of taxes for the payment of the principal and interest of such existing bonds shall apply and be in force for the collection of taxes for the payment of the principal and interest of such new bonds; provided, that the sinking fund may be used in the purchase and cancellation of such new bonds whenever the same can be bought at not more than their par value.

Tax laws to remain in force.
Ib.

Art. 477. The object and intention of these provisions being to enable the cities or towns in this state which have granted subsidy bonds to railroads or other works of internal improvement, or created any other indebtedness whatever, whether bonded or floating, to compromise the same, and thereby reduce the burden of taxation, it is hereby declared, as an inducement to the holders of said bonds to accept the compromise, that whenever such compromise shall be entered into and accepted in good faith either by the holders of the present bonds or by any persons purchasing such new bonds as provided herein, that all laws in force or which may hereafter be in force for the assessment and collection of the state taxes shall also be in force and apply to the assessment and collection of the taxes levied to meet the interest and sinking fund of said new bonds; and in any suits instituted to enforce the payment of said new bonds or coupons against any such city or town, no defense either in law or equity shall be admitted in any of the courts of this state except such as originated upon or subsequent to the issuance of such new bonds.

Laws to enforce collection continued in force, and all defenses to bonds cut off.
Ib.

Art. 478. Whenever a collector of taxes shall neglect or refuse to collect the taxes levied for the payment of the interest and sinking fund of such new bonds, he shall be liable on his official bond, at the suit of any persons holding any of said bonds or coupons, for all such damages as said person or persons shall have sustained by reason of his neglect or refusal; nor shall such collector or his sureties be relieved of such liability by his resignation of the office; and whenever any person who may be elected collector of taxes of any city or town shall fail, neglect or refuse to give the bond required by law for the collection of such tax, or whenever the mayor and board of aldermen shall appoint any person who shall fail, neglect or refuse to give said bond, or whenever they shall fail, neglect, or refuse to appoint some person who will give said bond and collect said tax, then it is hereby made the duty of the governor to appoint some suitable person to collect said taxes, who shall perform all the duties required by these provisions or any other laws of this state relating to the collection of said taxes, from the term of his said appointment until the next general election.

Tax collector; liability; governor to appoint, when.
Ib.

Art. 479. Whenever a compromise of the debt of any city or town shall be effected, as hereinbefore provided, and the bonds are delivered to the creditors, a board of liquidation, consisting of five reputable citizens of such city or town, shall be appointed forthwith in the manner following: The mayor of the city or town shall appoint one, the governor of the state shall appoint one, and the district judge of the district in which such city or town shall be situated shall appoint one, the city council of the city or town shall appoint one, and the holders of said indebtedness, or a majority of them, shall appoint one; and each shall fill vacancies in the office of their respective appointees in said board; and in case of failure, neglect or refusal of any one or all of said officers to appoint a member of said board, or to fill vacancies therein, then the holders of said bonds, or any one or more of them shall have the right to apply

The method of arranging a compromise.
Ib.

to the district court of the district in which such city or town shall be situated, or to the judge thereof in vacation, for the appointment of a member or members of said board necessary to complete the same, and it shall be the duty of said court or judge to make said appointment. The members of said board shall serve without compensation and shall hold their offices for the term of four years and until their successors are appointed and qualified. Each member of said board shall take an oath to faithfully perform the duties of his office. A majority of said board shall constitute a quorum for the transaction of business. Said board, or a majority thereof, shall select some solvent depository for all moneys coming under their control, as hereinafter provided, and for whose acts they shall be responsible, and shall, in writing signed by them, notify the collector of taxes of said city or town of said selection. It shall thereupon become the duty of such collector to deposit at the close of business each day one-half of all moneys collected by him for the twenty-four hours next preceding, on account of all the taxes of whatever nature levied by said city or town, with the said depository, whose receipt therefor shall be an acquittance to said collector; and said collectors shall be liable on their official bonds for any failure to promptly make such deposits and for ten per cent per month of such amounts, and in addition thereto as penalty; which sums may be recovered by said board of liquidation in a suit therefor; and it shall be their duty to promptly institute such suits. But whenever the total of said deposits shall equal the annual interest on said bonds it shall be lawful for such collector to discontinue said deposits until he shall be notified in writing by said board that said deposits are reduced below that sum. Said funds of cities or towns shall be subject to the order of said boards of liquidation, and shall be applied by them to the payment, first, of the interest on said bonds as the same matures; and secondly, to the payment of the principal thereof; and thirdly, to the payment of interest on any valid bonds issued under the provisions hereof; and fourthly, to the payment of the principal of bonds of the character last referred to on the maturity of same. The members of said board shall be liable for the prompt payment of said interest out of said funds, and in case of failure or refusal they shall, in addition, be liable to ten per cent of the amount of such interest as damages to be recovered by any person aggrieved thereby, in any court of competent jurisdiction. Whenever there shall be in the hands of such depositories a sufficient sum to pay two per cent of the principal of said bonds in addition to one year's interest it shall be the duty of said board of liquidation to use the same in the purchase of outstanding bonds, provided in article 476, which bonds when so purchased shall be cancelled, and shall, together with all coupons which have been paid, be returned to the council of the city or town. Expenses incurred by said board in advertising for purchase of bonds shall be paid out of said funds. Said boards shall make semi-annual reports to the said councils of their acts and of all receipts and disbursements of moneys coming under their control.

Receiver ap-
pointed,
when.
Ib.

Art. 480. Any city or town so situated as is herein set forth, which fails to effect a compromise of its debts, or pending the negotiation of a compromise, shall be permitted, on its application setting forth its financial condition and insolvency, to have the district court of the county in which said city or town is situated take

charge of the collection and appropriation of all taxes levied and assessed by said city or town, except so much thereof as is necessary to pay the current expenses of the city or town; and to that end said court, or the judge thereof in vacation, shall appoint a receiver, or may make the assessor and collector of said city or town its receiver, to collect and pay into a named depository all taxes levied by said city or town for the payment of its debts; and said courts shall decide all questions of priority between conflicting claimants of said funds, and shall provide for the ratable and equitable distribution of said funds among all creditors entitled thereto. But it shall not be lawful for any court to appoint a receiver of or concerning any city or town except upon the voluntary application of such city or town.

Art. 481. Cities and towns shall also have authority to fund, compromise and liquidate their indebtedness and issue bonds therefor under such conditions, restrictions and limitations as are prescribed under title County Finances, chapter two, conferring such authority on counties, cities and towns, and as may be otherwise provided by law.

Other instances when debts may be compromised and bonds issued, etc.

Art. 482. The boards of aldermen, or other constituted municipal authorities of cities bordering on the coast of the Gulf of Mexico, are hereby authorized and empowered to appropriate money to improve and to aid in the improvement of their harbors and of the bars at the entrance thereof; provided, that they shall not thereby increase their aggregate debt beyond the amount of indebtedness limited by their charters respectively; such appropriations to be made out of any surplus funds which may at any time be on hand, and by the use or sale of any bonds heretofore authorized to be issued; provided, such bonds are not needed for the purposes for which they were specially authorized; and also if necessary therefor, to issue and dispose of bonds with interest coupons, attached in such amounts as may be necessary, not to exceed the limit of indebtedness fixed by their charters.

Gulf cities may issue bonds for harbors, etc. (Acts of 1883, p. 48.)

Art. 483. The city council or other constituted municipal authorities, as the case may be, shall levy an annual ad valorem tax on the property in said city, sufficient to pay the interest and create a sinking fund for the redemption of said bonds, as required by the constitution. The interest on said bonds shall be paid semi-annually, and it shall not exceed five per cent. Said bonds shall not be sold at less than par.

Tax to be levied, interest paid and bonds sold, etc. lb.

Art. 483a. The city council or town council in any city or town within this state having less than three thousand inhabitants, according to the last preceding census, may by an ordinance of said city council or town council, as the case may be, dispense with the office of marshal; provided, that when the city marshal has been elected by the people he shall not be removed during his term of office under the provisions of this article.

May dispense with office of city marshal. (Acts of 1895, p. 49.)

CHAPTER FIVE.

TAXATION.

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Ad valorem tax.
Ib. §81.
(Const., art. 11, §4.)

Article 484. [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.

To levy and collect tax and issue bonds for improvements, buildings, etc.
(Acts of 1885, p. 99.)

Art. 485. The city or town council or board of aldermen of any incorporated city or town within the limits of this state shall have power, by ordinance, to levy and collect an annual ad valorem tax of not exceeding twenty-five cents on the one hundred dollars valuation of taxable property within such city or town for the erection, construction or purchase of public buildings, streets, sewers and other permanent improvements within the limits of such city or town. Within the meaning of this article shall be included building sites and buildings for public free schools and institutions of learning within those cities and towns which have assumed or which may hereafter assume the exclusive control and management of the public free schools and institutions of learning within their limits.

Levy tax and issue bonds for public improvements.
(Acts of 1891, p. 135.)

Art. 486. [425c] The city or town council of any city or town in this state incorporated under the general laws shall have the power by ordinance to levy and collect an annual ad valorem tax sufficient to meet the interest and sinking fund on all indebtedness legally incurred prior to the adoption of the constitutional amendment in 1883, regarding the power of cities and towns to levy and collect taxes, etc., and may levy and collect twenty-five cents on the one hundred dollars valuation of all property in such city or town for current expenses, and may levy and collect an additional twenty-five cents on the one hundred dollars valuation, for the purpose of construction or the purchase of public buildings, waterworks, sewers, street improvements and other permanent improvements within the limits of such city or town, and all cities and towns providing for such improvements shall have the power to issue coupon bonds of the city therefor in such sum or sums as they may deem expedient, to bear interest not exceeding six per cent per annum; provided, that the aggregate amount of bonds issued for the above named purposes shall never reach an amount where the tax of one-fourth of one per cent will not pay current interest and provide a sinking fund sufficient to pay the principal at maturity, and the amount of bonds legally issued under acts passed prior to the adoption of the present constitution shall not be computed and estimated in the amount of bonds which may be issued for the above named city improvements. Within the meaning of this article shall be included building

sites and buildings for the public free schools and institutions of learning, within those which have assumed or may assume hereafter the exclusive control and management of the public free schools and institutions of learning within their limits, and shall also have power to levy by ordinance a tax not exceeding fifteen cents on the one hundred dollars for the improvement of the roads, bridges and streets of such town or city within its limits as provided by the amendment of 1883, to the constitution of this state.

Art. 487. [426] Cities having more than ten thousand inhabitants may levy, assess and collect taxes not exceeding one and one-half per cent on the assessed value of real and personal estate and property in the city, not exempt from taxation by the constitution and laws of the state, and assessments, levy and collection of taxes made by such cities for the year 1889 are hereby made valid to the amount aforesaid, and such cities are hereby authorized to levy, assess and collect a further tax of twenty-five cents on the one hundred dollars worth of property for the purpose of paying the debts of such city lawfully contracted prior to the first day of January, 1889, not to include any bonded debt. Any funding warrants that may be issued for such debt by any such city shall not be included in the limit of six per cent prescribed by article 466; provided, that this article shall not apply to or in any manner affect any city organized under a special charter, and shall not be construed to validate any debt contracted by any city without authority of law existing at the time the same was contracted.

Cities of 10,000 inhabitants and over to levy and collect tax; validating act. (Acts of 1889, p. 3.)

Art. 488. [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. 11, §6.)

Art. 489. [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. (Acts of 1875, p. 256, §83.)

Art. 490. [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. 491. [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 and firm keeping a grog-shop, tippling-place, 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 liv-

Occupations that are subject to taxation. Ib. §84.

ery 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.

Same subject.
Ib. §85.

Art. 492. [431] 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 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. 493. [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. 494. [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. 495. [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. 496. [435] The term personal estate or property, as used in this title, shall be construed to include all household furniture, money, goods, capital, chattels, public stocks and stocks of corporations, moneyed or otherwise, and generally all property which is not real.

Art. 497. [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.

City council may provide for the exemption of property from taxation, etc. Ib. §90.

Art. 498. [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.

Taxes for payment of indebtedness. (Const., art. 11, §6.)

CHAPTER SIX.

COLLECTION OF TAXES.

Article	Article
Power of city council to provide for collection of taxes..... 499	Action of board final..... 513
Power of city council to regulate tax lists, assessment of taxes, etc..... 500	Compensation of board and secretary.... 514
Duty of taxpayers to render inventory of property, etc..... 501	Oath of members..... 515
Board of appraisalment shall be appointed 502	Duty of assessor and collector in regard to collection of taxes..... 516
Duty of assessor and collector to make list of personal property, etc..... 503	Property of taxpayer shall be levied on and sold for taxes, when..... 517
Unrendered property shall be ascertained, etc., by assessor..... 504	Assessor and collector shall make deed to purchaser of property sold for taxes; effect of deed, right of redemption, etc. 518
Board of equalization, how constituted.. 505	Sale may take place at any other time than that first advertised, and may be continued from day to day..... 519
Annual meetings of board..... 506	Property shall be struck off to city, when..... 520
Value of property, how fixed..... 507	Property of infant, etc., may be redeemed, when..... 521
Shall equalize value of lots..... 508	Taxes, etc., collectible in current money only..... 522
Lists of unrendered property to be examined..... 509	
Notice to taxpayer, how given..... 510	
Valuation lowered, when..... 511	
Rolls to be approved, when..... 512	

Article 499. [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. (Acts of 1875, p. 256, §91.)

Art. 500. [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

Power of city council to regulate tax lists, assessment of taxes, etc. Ib. §92.

liable for any tax under the provisions of this title, and neglecting to render a list, inventory and appraisalment thereof, as required by ordinance of said city, shall be liable to fine and imprisonment.

Duty of tax-payers to render inventory of property, etc.
Ib. §93.

Art. 501. [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 tax-payers herein, and make all necessary rules and regulations to secure the rendition of property and the collection of taxes due thereon.

Duty of assessor and collector to make lists of property, etc.
Ib. §95.

Art. 502. [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 equalization, 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. 503. [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 equalization 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. 504. [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.

Appointment and duties of board of equalization.
(Acts of 1837, p. 152.)

Art. 505. The city councils of the several cities and towns of this state incorporated under the general laws shall annually, at their first meeting, or as soon thereafter as practicable, appoint three commissioners, each being a qualified voter, a resident and property-owner of the city or town for which he is appointed, who shall be styled the board of equalization, and at the same meeting said council shall by ordinance fix the time for the meeting of such board of equalization.

Annual meetings of said board.
Ib.

Art. 506. The board of equalization shall convene annually, at the time fixed by the city council, to receive all the assessment lists or books of the assessor of their city, for examination, correction,

equalization, appraisalment, and approval, and at all meetings of said board the city secretary shall act as secretary thereof.

Art. 507. The board of equalization shall cause the assessor to bring before them, at the time fixed for the convening of said board, all the assessment lists or books of the assessor of their city, for their examination, that they may see if each and every person has rendered his property at a fair market value, and said board shall have power to send for persons and papers, to swear and qualify persons who testify, to ascertain the value of such property; and if they are satisfied it is too high, they shall lower it to its proper value; and if too low, they shall raise the value of such property to a proper figure. Said board shall also have power to correct any errors that may appear on the assessor's lists or books.

Shall value
property.
Ib.

Art. 508. The board of equalization shall equalize as near as possible the value of all the improved lots within the corporate limits of their city, having reference to the size and location of said lots and the improvements thereon, and shall equalize the value of unimproved lots as near as possible, having reference to the size and location thereof, and all other property of the same kind shall be made as nearly equal as possible. Any person may file with said board at any time before the final action of said board a complaint as to the assessment of his or any other person's property, and said board shall hear said complaint, and said complainant shall have the right to have witnesses summoned in sustaining said complaint as to the insurance on said property, or the rents and profits it may bring the holder thereof.

Values to be
equalized by
board.
Ib.

Art. 509. The city assessor at the same time that he delivers to said board his lists and books, as provided in article 507, shall also furnish to said board a certified list of the names of all persons who either refuse to swear or qualify or to sign the oath or affirmation as required by law, together with a list of the property of such persons situated within the corporate limits of their city, as made by him through other information, and said board shall examine said lists and appraise the property so listed by the assessor.

Unrendered
property list
to be exam-
ined by board.
Ib.

Art. 510. In all cases where the board of equalization shall find it their duty to raise the value of any property appearing on the lists or books of the assessor, they shall, after having fully examined such lists or books and corrected all errors appearing therein, adjourn to a day not less than ten nor more than fifteen days from the date of adjournment, such day to be fixed in the order of adjournment, and shall cause the secretary of said board to give written notice to the owner of such property or to the person rendering the same of the time to which said board may have adjourned, and that such owner or person rendering the said property may at that time appear and show cause why the value of said property should not be raised, which notice may be served by depositing the same, properly addressed and postage paid, in the city postoffice.

Notice to
property own-
ers.
Ib.

Art. 511. The board of equalization shall meet at the time specified in said order of adjournment, and shall hear all persons the value of whose property has been raised, and if said board is satisfied they have raised the value of such property too high, they shall lower the same to its proper value.

Board to low-
er values,
when.
Ib.

Art. 512. The board of equalization, after they have finally examined and equalized the value of all property on the assessor's lists or books, shall approve said lists or books and return them together with the lists mentioned in article 509, that he may make up there-

Approval of
lists and rolls
by board.
Ib.

from his general rolls as required by law; and when said general rolls are so made up the board shall meet again to examine said rolls and approve the same if found correct.

Action of board final.
Ib.

Art. 513. The action of said board at the meeting provided for in article 511, shall be final, and shall not be subject to revision by said board or by any other tribunal thereafter.

Compensation of board.
Ib.

Art. 514. The members of the board of equalization and the city secretary while acting as secretary of said board shall receive such compensation for their services, to be allowed by the city council, as said council may deem just and reasonable.

Oath to be taken.
Ib.

Art. 515. Before said board shall enter upon their duties they shall be sworn, by any officer authorized by law to administer oaths, to faithfully and impartially discharge all duties incumbent upon them by law as such board.

Duty of assessor and collector in regard to collection of taxes.
(Acts of 1875, p. 256, §98.)

Art. 516. [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. 517. [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 court house 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.

Assessor and collector shall make deed to purchaser to property sold for taxes; effect of deed, right of redemption, etc.
Ib. §100.

Art. 518. [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:

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 the 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 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. 519. [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. 520. [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.

Taxes, etc., collectible in current money only. (Const., art. 11, §4.)

Ib. §105.

Art. 521. [450] If the real estate of an infant, feme 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. 522. [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.....	523	May control, etc., the storing of gunpowder, etc.....	529
May prohibit, etc., dangerous condition of chimneys, etc.....	524	May regulate, etc., the building of parapets and party walls.....	530
May prevent the deposit of ashes in improper places.....	525	May compel owners of buildings to have scuttles, etc.....	531
May require inhabitants to keep fire buckets, etc.....	526	May provide regulations for extinguishment of fires.....	532
May regulate carrying on of business dangerous in promoting fires.....	527	Same subject.....	533
May regulate, etc., use of fireworks and firearms.....	528	May procure fire engines, etc.....	534
		Buildings may be blown up, etc., when and the damage in such case.....	535
		Damages satisfied, how.....	536

City council may regulate and control the erection, etc., of wooden buildings.

Article 523. [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.

May prohibit, etc., dangerous condition of chimneys, etc.

Ib. §106.

Art. 524. [454] The city council shall have power to prevent and prohibit the dangerous condition of chimneys, flues, fire-places, stovepipes, ovens, or 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 prevent deposits of ashes in improper places, etc.

Ib. §107.

Art. 525. [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.

Art. 526. [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. 527. [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. 528. [458] To regulate or prevent and prohibit the use of fireworks and firearms.

May regulate, etc., use of fireworks and firearms.
Ib. §110.

Art. 529. [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. 530. [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. 531. [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. 532. [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. 533. [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. 534. [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 ax 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 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.

May procure fire engines, etc.
Ib. §116.

Art. 535. [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 building which

Building may be torn down or blown up, etc., when, and the damages in such cases.
Ib. §117.

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 and 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. 536. [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.

[See Article 449.]

	Article		Article
City council may appoint health physician, etc	537	Any person liable to punishment, when..	540
Power to make regulations in regard to pestilence and disease.....	538	Inn-keeper, physician, etc., shall report persons sick with small-pox, etc.....	541
Owner, etc., of public conveyance, conveying into city person sick with contagious disease, liable to punishment, when	539	Power of council to have city cleansed, etc	542
		Health physician may be authorized to do, what	543

{ City council may appoint health physician, etc. Ib. §119.

Article 537. [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. 538. [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. 539. [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, with 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 persons sick with contagious disease, liable to punishment, when.
Ib. §121.

Art. 540. [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. §122.

Art. 541. [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 smallpox, etc.
Ib. §123.

Art. 542. [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 purposes 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

Power of city council to have city cleansed, etc.
Ib. §124.

name of the corporation, in any court having jurisdiction, and the statement so 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. 543. [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.....	544	Suit against owner of property for im- provement tax, when, etc.....	547
Estimate of cost of improvements shall be made, etc.....	545	Condemnation of property.....	548
Property levied on and sold for improve- ments, when and how, etc.....	546	Rules for condemning property for rail- ways followed	549

Power of city
council to
have streets,
etc., graded,
etc.
ib. §126.

Article 544. [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 costs 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 cost of said improvement.

Estimate of
cost of im-
provements
shall be made,
etc.
ib. §127.

Art. 545. [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.

Art. 546. [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 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 other 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.

Property levied on and sold for taxes for improvements, when and how, etc. Ib. §128.

Art. 547. [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. §129.

Art. 548. That whenever the city council of any incorporated city or town shall deem it necessary to take any private property in order to open, change or widen any public street, avenue or alley, or for the construction of water mains or supply reservoirs or stand pipes for waterworks or sewers, or for the purpose of establishing thereon one or more hospitals or pest-houses within or without the limits of such city or town, such property may be taken for such purposes by making just compensation to the owner thereof. If the amount of such compensation can not be agreed upon it shall be the duty of such city council to cause to be stated in writing the real estate or property sought to be taken, the name of the owner thereof and his residence, if known, and file such statement with the county judge of the county in which said property is situated. Any company or corporation chartered under the laws of this state for the purpose of constructing waterworks or furnishing water supply for any town or city shall have the same right to condemn property necessary for the construction of supply reservoirs or stand pipes for waterworks, when deemed necessary to preserve the public health, that is given towns and cities under this article. Upon the filing of the statement provided for in this article it shall be the duty of said judge, in term time or vacation, to appoint three disinterested freeholders and qualified voters of the county as special commissioners to assess the damages to accrue to the owner by reason of such condemnation.

Condemnation of property. (Acts of 1891, p. 172.)

Art. 549. The commissioners so appointed shall, in their proceedings, be governed and controlled by the law in force in reference to the condemnation of the right of way for railroad companies and the assessment of damages therefor—the city, town, company or

Rules for condemning property for railroads followed. (Acts of 1889, p. 3.)

corporation occupying the position of the railroad company. And all laws in reference to applications for the condemnation for right of way of railroad companies, including the measure of damages, the right of appeal, and the like, shall apply to an application by a city or town, company or corporation, under this and the preceding article, for the condemnation of property for the purpose of opening, changing, or widening streets, avenues or alleys, or for the construction of water mains, sewers, supply reservoirs or stand pipes—the city, town, company or corporation to occupy the position of the railroad company.

CHAPTER TEN.

MISCELLANEOUS PROVISIONS.

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City council may cause dangerous building, etc., to be removed.....	550	Outgoing officer shall deliver books, etc., to his successor.....	565
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Official paper and contract for publishing, etc.....	555	City exempt from giving bond in suits..	570
Statement of receipts and expenditures, etc., shall be published annually.....	556	Cemetery lots exempt from forced sale.	571
Ordinances shall be published, etc.....	557	Rights, actions, etc., not affected by this title.....	572
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City council may cause dangerous buildings, etc., to be removed. (Acts of 1875, p. 256, §131.)

Article 550. [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. 551. [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. 552. [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.

Art. 553. [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.

Wards of city to remain unchanged until, etc. Ib. §134.

Art. 554. [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.

Occupation license to be suspended or revoked, etc., when. Ib. §135.

Art. 555. [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. 556. [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. 557. [486] Every ordinance imposing any penalty, fine, imprisonment or forfeiture shall, after the passage thereof, be published in every issue of the official paper for ten days; if the official paper be published weekly, the publication shall be made in one issue thereof; and proof of such publication shall be made by the printer or publisher of such paper making affidavit before some officer authorized by law to administer oaths, and filed with the secretary of the city or town, and shall be prima facie evidence of such publication and promulgation of such ordinances in all courts of the state, and such ordinances so published shall take effect and be in force from and after the publication thereof, unless otherwise expressly provided. Ordinances not required to be published shall take effect and be in force from and after the passage, unless otherwise provided. If any town or city shall desire to publish its ordinances in pamphlet or book form, it shall not be necessary to republish such ordinances as have been previously published.

Ordinances, when and how published. (Acts of 1889, p. 4.)

Art. 558. [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. (Acts of 1875, p. 256, §139.)

Style of ordinances.
Ib. §140.

Art. 559. [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.

Ordinances, etc., remain in force until, etc.
Ib. §141.

Art. 560. [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.

Fines, etc., to be paid into city treasury.
Ib. §142.

Art. 561. [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.

None but resident voters eligible to office.
Ib. §143.

Art. 562. [491] No person other than an elector, resident of the city, shall be appointed to any office by the city council.

Resignation of officers.
Ib. §144.

Art. 563. [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.

Power of city council to remove officers.
Ib. §145.

Art. 564. [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.

Outgoing officer shall deliver books, etc., to his successor, etc.
Ib. §146.

Art. 565. [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 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. 566. [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.

Art. 567. [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.

Attendance,
etc., of offi-
cers.
Ib. §148.

Art. 568. [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.

Power of city
council to pre-
scribe duties
of officers, re-
mit fines, etc.
Ib. §149.

Art. 569. [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.

Salary of offi-
cers shall be
fixed by city
council, etc.
Ib. §150.

Art. 570. [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.

City exempt
from giving
bond in suits.
Ib. §151.

Art. 571. [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.

Cemetery lots
exempt from
forced sale.
Ib. §152.

Art. 572. [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.

Rights, ac-
tions, etc., not
affected by
this title.
Ib. §153.

Art. 573. [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, offi-
cers, etc., not
affected by
this title.
Ib. §154.

Art. 574. [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, incorporated under or 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

Adjoining in-
habitants may
become part
of city, how.
Ib. §155.

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.

Segregating
territory from
city.
(Acts of 1883,
p. 99.)

Art. 575. [503a] Whenever fifty qualified voters of any territory within the limits of any incorporated town shall sign and present a petition to the mayor of such city praying that such territory, setting the same out by metes and bounds, be declared no longer a part of such town, it shall be the duty of the mayor thereof to order an election within thirty days thereafter to be holden at the different voting precincts of said town; and if a majority of the legal voters of said town voting at such election cast their votes in favor of discontinuing said territory as a part of said town the mayor of said city shall declare such territory no longer a part of said city, and shall enter an order to that effect on the minutes or records of the city council, and from and after the date of such order said territory shall cease to be a part of said town; provided, no city or town shall thus be reduced to a less area than one square mile or one mile in diameter around the center of the original corporate limits.

Liab. for
debts, etc.
Id.

Art. 576. [503b] Whenever any territory shall withdraw as above provided, and such city or town shall at the time of such withdrawal owe any debts by bond or otherwise, such withdrawing territory shall not be released from the payment of its pro rata of such indebtedness, but it shall be the duty of said city council to continue to levy an ad valorem tax each year on the property of said territory of the same rate as is levied upon other property of such city until the taxes collected from said territory shall equal its pro rata share of the indebtedness of said city or town at the time of the withdrawal. The taxes so collected shall be charged only with the cost of levying and collecting the same, and the same shall be applied exclusively to the payment of said pro rata share of indebtedness. Nothing herein shall be construed to prevent the inhabitants of said territory from paying in full at any time their pro rata share of the indebtedness of said city.

Rate of inter-
est on city
indebtedness.
(Act Feb. 26,
1874, §156.)

Art. 577. [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.

Incorporated
cities may es-
tablish libra-
ries.
Id.

Art. 578. [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.

Board of ex-
aminers of
finances.
(Acts 1895, p.
41.)

Art. 578a. It shall be the duty of the mayor of each city or incorporated town within this state, incorporated under the general laws of the state, at the first regular meeting in January of each year of the board of aldermen or city council, by and with the advice and consent of such board of aldermen or city council, to appoint three resident citizens of such city or incorporated town, who shall constitute and compose a board of examiners of the finances of said city or incorporated town.

Duties of
board.
Id.

Art. 578b. It shall be the duty of such examiners when appointed to proceed to examine the books and accounts of the various officers of such city or incorporated town, and to make a true report of the financial condition thereof under oath to the mayor and board of

aldermen or city council of such city or incorporated town as soon after their appointment as practicable; provided, that in no instance shall the return of such report under oath be deferred longer than the first regular meeting of the board of aldermen or city council in March of each year.

Art. 578c. Such examiners shall receive for their services such compensation as the board of aldermen or city council shall fix each for every day actually employed in their investigations, not to exceed fifteen days in each year, which sum shall be paid by order of the board of aldermen or city council. Compensation. Ib.

Art. 578d. The annual report of such board of examiners shall be passed upon by the board of aldermen or city council and spread upon the minutes of their meeting at the first regular meeting of said board or council after the return of such report. Council to pass on such report. Ib.

CHAPTER ELEVEN.

TOWNS AND VILLAGES.

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Art. 579. [506] When a town or village may contain more than two hundred and less than ten thousand inhabitants, it may be incorporated as a town or village, in the manner prescribed in this chapter. May be incorporated, when. (Acts of 1881, p. 63.)

Art. 580. [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; provided, that if any town or village be situated on both sides of a line dividing two counties, application may be made to the judge of the county court of either county in which a portion of said town or village is located, in manner and form as is hereinbefore provided; provided further, that in towns and villages that may be incorporated on territory in two counties, in the trial of the offenses before the mayor or recorder for a violation of the laws of the state or the ordinances of the corporation, an appeal shall be to the county court of the Towns and villages incorporated, when. (Acts of 1889, p. 5.)

county in which the offense may have been committed; and in cases in which said mayor or recorder have not final jurisdiction, but when sitting as an examining court, parties brought before them on such examining court, charged with an offense against the laws of the state, shall be bound over by them to the county court of the county in which said offense is alleged to have been committed, or to the district court, as the case may be.

County judge to order election to determine, etc.

Art. 581. [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 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. 582. [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 advertisement 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. 583. [510] Every 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. 584. [511] On each ticket the voter must write or cause to be written or printed, "corporation" or "no corporation."

Returns of election.

Art. 585. [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. 586. [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. 587. [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. 588. [515] The county judge shall immediately order an election for a mayor, a marshal and five aldermen.

Who are eligible for offices.

Art. 589. [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 583.

Commission of mayor, etc.

Art. 590. [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. 591. [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.

Art. 592. [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.

Annual election of officers.
lb. §6.

Art. 593. [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.

Quorum may pass by-laws.

Art. 594. [521] The board of aldermen shall have and exercise exclusive control over the streets, alleys and other public places within the corporate limits, and shall have the power to cause the male inhabitants between the ages of twenty-one and forty-five years, except ministers of the gospel actually engaged in the discharge of their duties, to work on the streets and public alleys not to exceed five days in any one year, or furnish a substitute, or a sum of money (not to exceed one dollar for each day's work demanded) to employ such substitute. They shall, as far as practicable, prevent any nuisances within the limits of the corporation, and cause such as exists 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 markets, and may do whatever else may be necessary to give effect to the provisions of this chapter; provided, that with the consent of the board of aldermen, where streets are continuations of public roads, the commissioners' court shall have power to construct bridges and other improvements thereon which facilitate the practicability of travel on said streets.

May prevent and remove nuisances, regulate markets, etc.
(Acts 1895, p. 89.)

Art. 595. [522] The board of aldermen shall have power to levy and collect an occupation tax of not more than one-half the amount levied by the state; also 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 and property shall not in any one year exceed the rate of one-fourth of one per cent on the one hundred dollars valuation.

Board of aldermen may levy tax.
(Acts of 1891, p. 171.)

Art. 596. [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. 597. [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. 598. [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,

Additional officers may be appointed.

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.

Board must prescribe amount of bonds, etc.

Art. 599. [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.

If bond is not given in five days after, etc.

Art. 600. [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.

Jurisdiction same as justices of the peace.

Art. 601. [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.

Shall enforce by-laws.

Art. 602. [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.

May fix penalty, when.

Art. 603. [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.

Party entitled to a jury, when.

Art. 604. [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.

Fines, how enforced.

Art. 605. [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.

Fees of mayor.

Art. 606. [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.

Powers, duties and fees of constable.

Art. 607. [534] The marshal shall have the same power 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. 608. [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 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. 609. [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. 610. [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.

Art. 611. [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.

Ordinances not to be enforced until.

Art. 612. [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.

Where property is liable for taxes and owner is unknown.

Art. 613. Towns and villages heretofore incorporated by the congress of the republic or the legislature of the state may, by a resolution of the board of aldermen and a two-thirds vote of the voters at an election held therefor, amend their charters in any particular not in conflict with the constitution of the state or the Revised Statutes.

Charters amended, how. (Acts of 1881, p. 83.)

Art. 614. In order to amend the charter of any town or village it shall be necessary before said amendment shall go into effect, for the board of aldermen to adopt a resolution setting forth the amendment, and a certified copy of the same shall be approved by the attorney-general and recorded in the office of the secretary of state before the same shall take effect.

Takes effect, when. Ib.

Art. 615. [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.

Corporation may be abolished, how.

Art. 616. [541] When any corporation is abolished as provided in the preceding article, or if any de facto corporation shall be declared void by any court of competent jurisdiction, or if the same shall cease to operate and exercise the functions of such de facto corporation, 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 under the provisions of this chapter; provided, that when any town or city shall reincorporate under chapters one or eleven of title eighteen of the Revised Civil Statutes, upon a majority of the legal voters, tax paying property holders of said town or city, all property, real and personal, of the old or de facto corporation shall be vested in the new one; and provided further, that the new corporation shall assume all the legal indebtedness, contracts and obligations of the old corporation; provided, where cities and towns have reincorporated under chapters one or eleven of title eighteen of the Revised Civil Statutes, upon a majority vote of the tax paying property owners of said city or town, all property, real or personal, of the old or de facto corporation shall be vested in the new one; and provided further, that the new corporation shall assume all the legal indebtedness, contracts and obligations of the old corporation.

Proceedings when incorporation abolished. (Acts of 1891, p. 95.)

Incorporations
for school
purposes.
(Acts 1893, p.
175.)

Art. 616a. Towns and villages authorized to incorporate under this chapter, or having two hundred inhabitants or over, not desiring to incorporate for municipal purposes, may incorporate for free school purposes only; provided, that the territory incorporated shall not exceed an area of sixteen square miles; and when so desiring, an election may be held under the provisions of this title and chapter, and if, at said election, a majority of the votes cast be in favor of the corporation, it shall be the duty of the county judge to make return thereof, and cause a record of the result of such election to be made, the same as provided by articles 585 and 586 of this chapter; upon which entry being made, such town or village shall be regarded as duly incorporated for the purpose of establishing and maintaining a free school therein, and shall, upon notice to the state board of education by the board of trustees hereinafter provided for, receive such pro rata share of the available school fund as its scholastic population may entitle it to.

Same vall-
dated.
Ib.

Art. 616b. All towns and villages heretofore incorporated under the provisions of said article as it heretofore existed, but which incorporation is invalid by reason of having incorporated more territory than a radius of two miles from the center of said town or village, or by reason of having incorporated pastoral or agricultural lands adjacent to such town or village, are hereby declared valid, and all acts of any such incorporated town or village are to be held binding and full force and effect given thereto; provided, that all towns and villages heretofore incorporated under and by the virtue of the provisions of this chapter, which embrace a radius of three miles from the center of such town or village, but are invalid by reason of having incorporated pastoral or agricultural lands adjacent to such town or village, are hereby declared valid, and all acts of any such incorporated town or village are to be held binding, and full force and effect given thereto; and provided further, that no such town or village shall hereafter incorporate a greater area than sixteen square miles.

Same.
(Acts 1895, p.
90.)

Art. 616c. All towns and villages which have heretofore attempted to be incorporated under the provisions of chapter 11, title 18, of the Revised Civil Statutes, but which in said attempted incorporation failed to comply with all the requirements of said chapter 11, title 18, but which said towns or villages have from and after the date of their several attempted incorporations, as aforesaid, exercised the functions of towns and villages, and been recognized as such towns or villages, be and are hereby declared to be towns and villages of the class named, and their incorporations be and the same are hereby declared to be as legal and valid as if the original acts of incorporation had been in strict compliance with the requirements of the law; provided, that nothing in this article shall be held to validate the incorporation of towns and villages that had less than two hundred inhabitants at the time of this attempted corporations of such towns and villages.

Commission-
ers to appoint
collector.

Art. 617. In all cases where the commissioners' court shall be vested with the authority conferred on them by the preceding article, it shall be the duty of such court to appoint a suitable person to perform the duty of tax collector, whose duty it shall be to collect the taxes within the territory comprised in the dissolved corporation, until such legal indebtedness of such corporation has been paid off or until such city or town has been reincorporated, and shall fix his bond in sufficient penalties to protect any fund collected; provided, that such appointee may be removed at any time for carelessness or inefficiency or other good cause.

CHAPTER TWELVE.

ABOLITION OF CORPORATE EXISTENCE.

Abolition of corporation provided.....	Article 617a	Disposition of corporate property.....	Article 617d
Petition and election to abolish.....	617b	Public free school management.....	617e
Qualified voters at such election; duties of county judge	617c	Collection of taxes.....	617f
		Public buildings, parks, etc.....	617g

Article 617a. Cities and towns incorporated under the general laws of the state, and cities and towns of ten thousand inhabitants or less chartered under special law, including those which may have heretofore accepted the provisions of title xviii., chapter 1, of the Revised Civil Statutes of the state, may abolish their corporate existence in the manner hereinafter provided.

Abolition of corporation provided. (Acts 1895, p. 166.)

Art. 617b. When one hundred of the property tax payers who are qualified voters of any such city or town 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 city or town as in the case of its incorporation.

Petition and election to abolish. Ib.

Art. 617c. All persons who are legally qualified voters of the state and county in which any such election is ordered, and are resident property tax payers in the city or town where such election is to be held, as shown by the last assessment roll of such city or town, shall be entitled to vote at such election; and if a majority of such qualified voters voting at such election shall vote to abolish such corporation, the county judge shall declare such corporation abolished, and enter an order to that effect upon the minutes of the commissioners' court, and from the date of such order said corporation shall cease to exist.

Qualified voters at such election; duty of county judge. Ib.

Art. 617d. When any corporation is abolished as provided in the preceding articles, all the property belonging thereto shall be turned over to the county treasurer, and the commissioners' court of the county shall provide for the sale and disposition of the same, except the property pertaining to the public free schools or devoted exclusively to public use; the commissioners shall also provide for the settlement of the debts due by the corporation, and for this purpose shall have the power to levy and collect a tax from the inhabitants of such city or town in the same manner as the said corporation would be entitled to do under its charter or the laws of the state; and any surplus remaining in the hands of the county treasurer after the payment of the debts of said corporation shall be paid to the trustees of the public free schools situated in said city or town, for the benefit of such schools.

Disposition of property of abolished corporation. Ib.

Art. 617e. Where the public free schools of any such city or town are under the management of trustees appointed or elected by the voters of the city or town, or by the city or town council, at the time its corporation is abolished under the provisions of this chapter, such trustees shall constitute the management of said schools for the remainder of the term for which they were appointed or elected, subject to the supervision of the commissioners' court, unless such city or town shall sooner become incorporated for school purposes only.

Public free school management, etc. Ib.

Art. 617f. All taxes for municipal or school purposes which have been levied at the date of abolishment of such corporation, and

Collection of municipal or school taxes.

which have not been paid, shall be collected by the collector of the county in the same manner provided by law for the collection of state and county taxes, and paid into the county treasury; but the portion of such taxes levied for the purpose of maintaining the public free schools of such city or town shall be paid over to the trustees of public free schools of said city or town and applied by them to the purposes for which they were levied.

Public build-
ings of abol-
ished corpora-
tion.

Art. 617g. When any corporation is abolished under the provisions of this chapter, and shall at the time of such abolishment own any public buildings, public parks, public works or other property, and the same shall not have been sold or disposed of as provided in this chapter, the same shall be managed and controlled by the commissioners' court of such county for the purposes to which same were originally used and intended, and for this purpose the commissioners' court shall have and exercise, with reference thereto, the powers originally conferred by charter upon the mayor and aldermen of such city.

TITLE XIX.

Commissioner of Deeds.

	Article		Article
Appointment of commissioners and terms of office.....	618	Force of acknowledgments thus taken..	621
Oath of commissioner.....	619	Commissioners to take depositions.....	622
Commissioner may administer oath or affirmation—their effect.....	620	Commissioners' seal	623

Article 618. [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, the District of Columbia, or in each or any of the territories of the United States, or in each or any foreign country, upon the recommendation of the executive authority of said states, District of Columbia, or territories or foreign country, 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.

Appointment of commissioners and terms of office. (Acts of 1885, p. 98.)

Art. 619. [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. (Act May 8, 1846, §4.) P. D. 3765.

Art. 620. [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. 621. [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. 622. [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

Commissioners to take depositions. Ib. §5. P. D. 3766.

be used as evidence in any cause pending in a court of the same, when returned as prescribed by law.

Commission-
ers' seal.
(Act Dec. 31,
1861, p. 21, §5.)
P. D. 3771.

Art. 623. [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.

TITLE XX.

Conveyances.

	Article		Article
Conveyances must be in writing, signed and delivered.....	624	Conveyance by sheriff or other officer will pass title	631
Purchaser or creditor, without notice, not to be affected.....	625	Estates in futuro	632
Conveyance of the greater estate passes the less	626	Implied covenants	633
An estate deemed a fee simple, when...	627	"Incumbrances" embraces, what.....	634
Form of conveyance	628	Conveyance of the separate lands of the wife, how made.....	635
Other forms and clauses valid.....	629	Conveyance of homestead, how made..	636
Must be witnessed or acknowledged.....	630	Failing as a conveyance, shall be valid as a contract	637

Article 624. [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.

Conveyances must be in writing, signed and delivered. (Act Feb. 5, 1830.) P. D. 997, 3875.

Art. 625. [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 or 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.

Purchaser or creditor, without notice, not to be affected. Ib. P. D. 997.

Art. 626. [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 affect such remainder.

Conveyance of the greater estate passes the less. Ib. P. D. 998.

Art. 627. [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.

An estate deemed a fee simple, when. Ib. P. D. 999.

Art. 628. [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.:

Form of conveyance. Ib. P. D. 1000.

"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 the presence of ———.”

Other forms and clauses valid.
Ib.
P. D. 1000.

Art. 629. [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.

Must be witnessed or acknowledged.

Art. 630. [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.

Conveyance by sheriff or other officer will pass title, when.
Ib.
P. D. 1001.

Art. 631. [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.

Estates in futuro.
Ib.
P. D. 1002.

Art. 632. [556] An estate of freehold or inheritance may be made, to commence, in futuro, by deed or conveyance, in like manner as by will.

Implied covenants.

Art. 633. [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:

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.

Incumbrances include what.

Art. 634. [558] The term “incumbrances” includes taxes, assessments and all liens upon real property.

Conveyance of separate lands of the wife, how made.

Art. 635. [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 article 4643.

Art. 636. [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 article 4643. Conveyance of homestead, how made.

Art. 637. [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. Failing as a conveyance, shall be valid as a contract.

TITLE XXI.

Corporations—Private.

[See Constitution, Article 12. For Service on, see Articles 1222, 1223.]

CHAPTER ONE.

PRELIMINARY PROVISIONS.

	Article		Article
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Public corporations	639		

Corporations classified.
(Act April 23, 1874, p. 120.)
P. D. 5932.
Public corporations.
P. D. 5933.
Private corporations.
P. D. 5934.

Article 638. [562] Corporations are either public or private.

Art. 639. [563] A public corporation is one that has for its object the government of a portion of the state.

Art. 640. [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.

	Article		Article
Private corporations may be created.....	641	Corporation shall exist from time of filing charter, etc.....	646
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Private corporations may be created.
(Act April 23, 1874.)
P. D. 5935.
For what purposes corporations may be created.
(Acts of 1895, p. 190.)

Article 641. [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. 642. [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 and scientific undertaking; the maintenance of a library, or the promotion of painting, music and other fine arts.
4. The encouragement of agriculture and horticulture by associations for the maintenance of public fairs and exhibitions of stock and farm products.
5. The maintenance of a public or private cemetery or crematory.
6. The construction and maintenance of any species of roads and bridges in connection therewith.
7. The construction and maintenance of a bridge which may be used for any or all modes of travel and transportation.

8. The construction and maintenance of a telegraph and telephone line.

9. The establishment and maintenance of a ferry.

10. The establishment and maintenance of a line of stages.

11. Building and navigation of steamboats and vessels and the carriage of persons and property therein.

12. The supply of water to the public.

13. The manufacture and supply of gas, and the supply of light, heat, and electric motor power, or either of them, to the public by any means.

14. The transaction of any manufacturing or mining business and the purchase and sale of such goods, wares and merchandise used for such business.

15. The transaction of a printing or publishing business, and in connection therewith the sale of goods, wares and merchandise of a stationery and blank book manufacturing business.

16. The establishment and maintenance of a hotel or steam laundry.

17. The erection or repair of any building or improvement, and the accumulation and loaning of money for said purposes, and for the purchase, sale and subdivision of real property in towns, cities and villages and their suburbs, not extending more than two miles beyond their limits, and for the accumulation and loaning of money for that purpose.

18. The transportation of goods, wares and merchandise, or of any valuable thing.

19. The promotion of immigration.

20. The construction and maintenance of sewers.

21. For the constructing, acquiring and maintaining and operating street railways and suburban or belt lines of railway within and near cities and towns, which may also construct, own and operate union depots. But no street railway company shall ever be exempt from the payment of assessments that may be legally levied or charged against it for street improvement. And for the establishment of companies to buy, own, sell and convey the right of way upon which to construct railroads.

22. The erection and maintenance of market houses and market places.

23. The construction, maintenance and operation of dams, reservoirs, lakes, wells, canals, flumes, laterals, and other necessary appurtenances for the purposes of irrigation, navigation, milling, mining, stockraising, and city water works.

24. The purchase and sale of goods, wares and merchandise and agricultural and farm products.

25. For the purpose of buying and selling goods, wares and merchandise of any description by wholesale or wholesale and retail; but the limitation upon stock and stockholders in corporations created under subdivision twenty-four of this article shall not apply to corporations created under this subdivision; provided, that no corporation created under this subdivision shall be chartered with a capital stock of less than twenty thousand dollars; and provided, further, that such wholesale and retail business shall not be conducted apart or in separate establishments.

26. The construction of harbors and canals on the coast of the Gulf of Mexico.

27. The growing, selling and purchasing of seeds, plants, trees,

etc., for agricultural, horticultural and ornamental purposes, and to purchase and lease all lands necessary for that purpose.

28. The construction or purchase and maintenance of mills, gins, cotton compresses, grain elevators, wharves and public warehouses for the storage of products and commodities, and the purchase, sale and storage of products and commodities by grain elevator and public warehouse companies, and the loan of money by such elevator or public warehouse companies.

29. The accumulation and loan of money; but this subdivision shall not permit incorporations with banking or discounting privileges.

30. The construction and maintenance of stock yards and pens.

31. The construction and maintenance of establishments for slaughtering, refrigerating, canning, curing and packing meat, and loaning or advancing money by such establishments on any class of live stock.

32. The construction and maintenance of establishments for the preserving and canning of fruits, vegetables and fish.

33. The establishment and maintenance of clearing houses.

34. To construct and maintain water power.

35. For the purpose of constructing railroads and bridges for railroad companies.

36. To support and maintain bicycle clubs and other innocent sports.

37. To act as trustee or assignee or receiver, when designated by any person, corporation or court so to do, and to do a general fiduciary and depository business; to act as surety and guarantor of the fidelity of employees, trustees, executors, administrators, guardians, public officials, or others appointed to or assuming the performance of any duty or trust, public or private, under appointment by any court or tribunal, or under contracts between private individuals or corporations; also on any bond or bonds that may be required to be filed in any judicial proceeding; to act as executor and testamentary guardian, when designated as such by decedents; provided, that when any executor's, administrator's or guardian's bond, or any bond required to be filed in any judicial proceeding or required to be filed by any public official, may be signed as surety by any corporation organized by authority of this section, and if such corporation shall be deemed and considered by the officer charged by law with the duty of accepting and approving such bond as sufficient security for the amount of such bond, such bond may be accepted and approved by the officer charged by law with the duty of accepting and approving the same, without being signed by other surety than such corporation, and any statute or law to the contrary, or requiring any such bond to be signed by two or more good and sufficient sureties, shall be governed and controlled by the provisions of this section; provided, that each corporation organized under this section shall publish in some newspaper of general circulation in the county where such company is organized, on the 1st day of February of each year, a statement of its condition on the previous 31st day of December, showing under oath its assets and liabilities, and that a copy of this statement be filed with the commissioner of insurance, statistics and history, and a fee of twenty-five dollars is paid to that officer for filing the same, and that an examination of its affairs be made at any time by the commissioner of insurance, statistics and history, such examination to be at the expense of the company; provided, that

guaranty and fidelity companies organized under the provisions of this section shall at all times keep or desposit with the secretary of state not less than fifty thousand dollars in available cash assets, and that this amount be kept intact at all times.

38. For establishing transportation companies with power to buy, construct, lease, own, operate, maintain and convey all kinds of steam ships, vessels and other water crafts, and may navigate the same between all ports of the globe, and upon rivers; and construct, buy, lease, own, maintain, operate and convey warehouses, docks and wharves, and to buy, lease, receive, own, hold and enjoy real and personal property necessary in the transaction of its business; to receive, purchase, hold, use and convey such rights, privileges, franchises and property, and to exercise beyond the jurisdiction of this state such power as may be granted to or conferred upon it by any foreign government, state or municipality; to have officers and agents and to maintain offices at all points at which the company may do business; to act as principal or agent in buying or selling merchandise in all foreign countries; to carry passengers, freight, express and mail.

39. The establishment of land companies to buy, own, sell and convey real estate in any state or foreign county; but such companies shall only own such real estate in this state as may be necessary for its office.

40. Any person or association of persons for the purpose of making, compiling and owning an abstract of titles to lands and liens of all character on any property, or any other abstract of records of this state, or any county thereof, required by law to be recorded.

41. The improvement of rivers and other waterways in this state, and to render the same navigable for steam vessels and other water crafts, with the authority to charge and collect tolls for the navigation of such rivers and waterways.

42. The protection, preservation and propagation of fish and game.

43. For the organization and maintenance of volunteer fire companies.

44. For the protection of women and children, and for the prevention of cruelty to animals.

45. For the erection and maintenance of sanitariums.

46. For the organization of fire, marine, life and live stock insurance companies.

47. To construct steam and electric plows for breaking, cultivating and draining of lands.

48. For the organization of laborers, workingmen, wage earners and farmers to protect themselves in their various pursuits.

49. For promoting and taking stock in manufacturing companies or corporations.

50. For the organization of mutual fire associations without an authorized or subscribed capital stock. The stockholders of all private corporations created under the provisions of this chapter shall be required to subscribe at least fifty per cent and pay in at least ten per cent of its authorized capital before it shall be authorized to do business in this state; and whenever the stockholders of any such company shall furnish satisfactory evidence to the secretary of state that at least fifty per cent of its authorized capital has been subscribed and ten per cent paid in, it shall be the duty of said officer to receive, file and record the charter of such company in the office of

the secretary of state upon application and the payment of all fees therefor, and to give his certificate showing the record of such charter and authority to do business thereunder; provided, that foreign corporations obtaining permits to do business in this state shall show to the satisfaction of the secretary of state that fifty per cent of their authorized capital stock has been subscribed and that at least ten per cent of the authorized capital has been paid in before such permit is issued.

51. The raising, buying and selling of live stock.

52. The establishment and carrying on of dairies and creamery companies.

53. The construction, maintenance and operation of terminal railway companies, said companies to have no right to charge other railroads for terminal facilities beyond what may be prescribed by the railroad commission.

54. To build, maintain and operate a line of road to mines, gins, quarries and mills, and to condemn land necessary for right of way for such road from and between such mine, gin, quarry or mill and the nearest line of railroad.

Charter and what it must set forth.
P. D. 5937.

Art. 643. [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 shall 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.
(Acts of 1887, p. 103.)

Art. 644. [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 acknowledgment of deeds; provided, that all charters for the purposes named in clauses two and three of article 642 of this chapter and title may be subscribed by married women, who may also be stockholders, officers and directors thereof; and their acts, contracts and deeds shall be as binding and effective for all the purposes of said corporation as if they were males, and the joinder and consent of their husbands and privy examinations separate and apart from them shall not be required.

Must be filed with secretary of state, etc.
(Act April 23, 1874, §9.)
P. D. 5940.

Art. 645. [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.

Corporation shall exist from time of filing charter, etc.
Ib. §10.
P. D. 5941.

Art. 646. [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. 647. [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.

Charter may be amended, how. Ib. §10. P. D. 6011b.

Art. 648. [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. Ib.

Art. 649. [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. Ib.

Art. 650. [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. Ib.

CHAPTER THREE.

POWERS AND DUTIES OF PRIVATE CORPORATIONS.

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Article 651. [575] Every private corporation, as such, has power—

General power of a corporation. P. D. 5942. (Acts of 1883, p. 98.)

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.

9. Any private corporation created either by special act of the legislature, or under the provisions of the general law, for the support of any benevolent, charitable, educational or missionary undertaking, the support of any literary or scientific undertaking, the maintenance of a library, or the promotion of painting, music or other fine arts, whose charter may expire or may have expired by limitation, may revive such charter with all the privileges and immunities and rights of property, real and personal, exercised and held by it at the date of the expiration of its said charter, by filing, with the consent of a majority of its stockholders, a new charter under the provisions of the general law of the state of Texas, reciting therein such original privileges and immunities and rights of property, and by filing therewith a certified copy of such original forfeited charter; and any two or more of such corporations may revive and consolidate their charters under a new corporate name or under the name of either, with all the privileges, immunities and rights of property, real and personal, enjoyed by each at the date of the expiration of their several charters, by in like manner filing a charter, which shall recite the fact of consolidation, accompanied by certified copies of said original charters; provided, the provisions hereof shall not be construed to relieve any corporation from the payment of occupation taxes now or hereafter required by law.

May increase
its capital
stock, how.
(Act of 1893,
p. 123.)
P. D. 5943.

Art. 652. [576] Any corporation may increase its capital stock to any amount, not exceeding at any one time 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 of stock shall become a part of the capital thereof. Such certificate shall be filed and recorded in the same manner as the charter; provided, that no stock shall be issued except for money paid, labor done, or property actually received.

Increase in
certain cases
validated.
Ib.

Art. 652a. That in all cases where the amount of the capital stock of any corporation has heretofore been increased by more than one increase thereof to an amount in excess of double the amount of the original capital, and such increase has been made with the sanction of the secretary of state, under his construction of the law, such increase shall be, and the same is hereby, validated and declared legal.

Art. 653. [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 borrow money.
Ib. §13.
P. D. 5944.

Art. 654. [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.

May open books for subscription of stock.
Ib. §14.
P. D. 5945.

Art. 655. [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.

Quorum and annual elections.
Ib. §15.
P. D. 5946.

Art. 656. [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.

President and secretary to be chosen.
Ib. §16.
P. D. 5947.

Art. 657. [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.

By-laws may be adopted, altered, etc.
Ib. §17.
P. D. 5948.

Art. 658. [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.

May increase number of directors or trustees.
Ib. §18.
P. D. 5949.

Art. 659. [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.

Failure to elect directors shall not dissolve, etc.
Ib. §19.
P. D. 5950.

Art. 660. [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. 661. [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. 662. [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. 663. [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

Shall report to stockholders and make dividends.
Ib. §21.

such dividends of the profits from the business of the corporation as they shall deem expedient, or as the by-laws may prescribe.

Existing corporations may accept provisions of this title, etc.
Ib. §22.
P. D. 5953.

Art. 664. [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 of the provisions of this title, and have and exercise all of 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.

Corporation restricted to the objects of its creation.
Ib. §23.
P. D. 5954.

Art. 665. [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.

Stock of corporation is personal estate.
Ib. §24.
P. D. 5955.

Art. 666. [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.

Directors may require payment of stock.
Ib. §25.
P. D. 5956.

Art. 667. [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.

Stock forfeited, when and how.
Ib. §26.
P. D. 5957.

Art. 668. [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 postoffice, properly directed to him at the postoffice 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.

Corporation may sue its own members.
Ib. §27.
P. D. 5958.

Art. 669. [593] All bodies corporate may sue for, recover and receive from their respective members all arrears or other debts, dues or other demands which are now, or hereafter may be, owing to them, in like mode, 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. 670. [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		
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Existence of corporation shall not be disputed collaterally	675		

Article 671. [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 the 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.

Art. 672. [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.

Art. 673. [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.

Art. 674. [598] No misnomer of any corporation shall defeat or vitiate any gift, grant, conveyance, devise or bequest to the same.

Art. 675. [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 had been adjudged in a direct proceeding had for the purpose.

Art. 676. [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 con-

When and how stockholders may be made liable on execution.
P. D. 5960.

Secretary shall furnish names, etc., of stockholders to plaintiff.
P. D. 5961.

Principal office must be kept in state.
P. D. 5962.

Misnomer shall not vitiate.
P. D. 5965.

Existence of corporation shall not be disputed collaterally.

Corporation may convey lands, how.
P. D. 5966.

veyances of lands, may be recorded in like manner and with the same effect as other deeds.

Records of corporation are evidence. P. D. 5967.

Art. 677. [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.

Corporations organized under act of 1871 validated.

Art. 678. [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.

Business firm shall give notice of intention to incorporate, etc.

Art. 679. [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.

CHAPTER FIVE.

DISSOLUTION OF PRIVATE CORPORATIONS.

	Article		Article
Corporation is dissolved, how.....	680	Trustees responsible to creditors, etc., to what extent	683
Dissolved by failure to begin operations in three years	681	Liability of stockholders to creditors and to reach other.....	684
Receiver or trustees to close business of, etc.	682	Stockholders may compel contribution..	685
		Only liable for unpaid stock.....	686

Corporation is dissolved, how. P. D. 5968.

Article 680. [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.

Dissolved by failure to begin operations in three years. P. D. 5969.

Art. 681. [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.

Receiver or trustees to close business of, etc. P. D. 5970.

Art. 682. [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.

Art. 683. [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. 684. [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 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.

Liability of stockholders to creditors and to each other.
P. D. 5972.

Art. 685. [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.

Stockholder may compel contribution.
P. D. 5973.

Art. 686. [610] No stockholder shall be liable to pay debts of the corporation beyond the amount unpaid on his stock.

Only liable for unpaid stock.
P. D. 5974.

CHAPTER SIX.

MACADAM AND PLANK ROAD CORPORATIONS.

Article	Article
May enter upon land, make survey, etc. 687	Tolls to be regulated by commissioners' court 693
May condemn land, etc. 688	Persons exempt from tolls 694
If road is out of repair, charter may be forfeited 689	Mile posts and rates of toll 695
Shall not collect tolls when road is out of repair 690	Any person may complain of non-repairs; proceedings in such case 696
Width of road and how to be constructed 691	Travelers practicing fraud, may be sued, etc. 697
No toll gates permitted in towns, etc. 692	

Article 687. [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 enter upon lands, make surveys, etc.
P. D. 5975.

Art. 688. [612] If any such corporations 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.

May condemn land, etc.
P. D. 5976.

If road is out of repair, charter may be forfeited.
P. D. 5977.

Art. 689. [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. 690. [614] If any 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. 691. [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. 692. [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.

Tolls to be regulated by commissioners' court.
P. D. 5979.

Art. 693. [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 house-holders, 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.

Persons exempt from tolls.
P. D. 5980.

Art. 694. [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 over such road free from toll.

Mile posts and rates of toll.
P. D. 5981.

Art. 695. [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.

Any person may complain of non-repairs; proceedings in such case.
P. D. 5982.

Art. 696. [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 com-

plaint 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.

Art. 697. [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 poles, etc., across public roads, etc. 698	Company may own line in or out of state, and may join with other company 701
May enter upon lands, etc. 699	Cities, etc., may direct as to posts, etc. . 702
One company can not contract to exclude another 700	Manner of consolidating with another company 703

Article 698. [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 set poles, etc., across public roads. P. D. 5984.

Art. 699. [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 the case of railway corporations.

May enter upon lands, etc. P. D. 5985.

Art. 700. [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.

One company cannot contract to exclude another. P. D. 5986.

Company may own line in or out of state, and may join with other company.
P. D. 5987.

Art. 701. [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. 702. [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. 703. [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 704

Additional powers of. (Act April 23, 1874, §58.)
P. D. 5991.

Article 704. [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 705	May contract with cities, etc.....	Article 706
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Article 705. [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.

Privileges of such corporations.
P. D. 5992.

Art. 706. [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.

May contract with cities, etc.
P. D. 5993.

CHAPTER TEN.

EDUCATIONAL CORPORATIONS.

Faculty of, and their powers.....	Article 707	May convert property into stock or scholarships	Article 710
Directors, etc., may make by-laws, etc..	708	Limitation as to debts, and liability of directors	711
May procure shops, etc., for manual labor purposes	709	May change location	712

Article 707. [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.

Faculty of, and their powers.
P. D. 5994.

Art. 708. [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

Directors, etc., may make by-laws, etc.
P. D. 5995.

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. 709. [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. 710. [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. 711. [635] The directors of any such corporation, whose property is held not as stock, but upon trust or 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. 712. [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.....	713	Not required to state capital stock in charter	714

Powers and privileges of.
P. D. 6000.

Article 713. [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.

Not required to state capital stock in charter.
P. D. 6001.

Art. 714. [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.

CHAPTER TWELVE.

CEMETERY CORPORATIONS.

	Article		Article
Powers of	715	Owners of lots are members of cor-	
May convey lots for purposes of sepul-		poration	717
ture, etc.	716		

Article 715. [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. 716. [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. 717. [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.

	Article		Article
Bridges and ferries to be six miles apart	718	Owner liable for damages	
Commissioners' court shall regulate tolls	719		720

Article 718. [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. 719. [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. P. D. 6011d.

Art. 720. [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. P. D. 6011e.

CHAPTER FOURTEEN.

CHANNEL AND DOCK CORPORATIONS.

	Article		Article
This title embraces, what.....	721	Corporations created under this chapter, additional powers granted	724
Channel corporations, added powers.....	722	Rates, tolls and charges subject to legislative control	725
Dock corporations, added powers.....	723		

This title embraces, what. (Acts of 1887, p. 91.)

Article 721. [644a] This title shall embrace and include the creation of private corporations for the purpose of constructing, owning and operating deep water channels from the waters of the Gulf of Mexico along and across any of the bays on the coast of this state to the mainland, for the purposes of navigation and transportation, and for the construction, owning and operating docks on the coast of this state for the protection and accommodation of ships, boats, and all kinds of vessels for navigation, and their cargoes.

Channel corporation; added powers. 1b; amend., Acts 1895, p. 185.

Art. 722. [644b] Every such channel corporation shall, in addition to the powers herein conferred, have power—

1. To cause such examination and survey for its proposed channel to be made as may be necessary to the selection of the most advantageous route for such purpose, by its officers, agents, or servants, to enter upon any of the waters of such bays, and upon any of the lands of this state or of any person.

2. To take and hold such voluntary grant of real estate and other property as shall be made to it to aid in the construction and maintenance of its deep water channel, and works pertinent thereto.

3. To construct its channel across, along, through, or upon any of the waters of the bays within the jurisdiction of this state, and so far into the mainland as may be necessary to reach a place for its docks that will afford security from cyclones, storms, swells, and tidal waves, with such depth as may suit its convenience and the wants of navigation, not less than five feet, and a width of not less than forty feet.

4. To furnish to vessels and boats, adapted to the purpose, facilities for navigating in and along the entire length of its channel, and to charge and collect a toll therefor, to be prescribed and established by its by-laws, not to exceed one cent per barrel bulk of the capacity of each vessel, for each mile of the length of its channel used by the vessel going either way.

5. To borrow such sums of money as may be necessary for constructing, finishing, or operating its channel, and to issue and dispose of its bonds for any amount so borrowed, and to mortgage its 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 such channel corporation; the damages for any property thus appropriated to be assessed and paid for in the same manner as provided by law in the case of railroads; provided, that no damages shall be assessed against or paid by it for any portion of the route of its channel embraced within and covered by the waters of

any bay on the coast of this state, nor for any portion of any island belonging to the state that may be requisite and necessary to the construction and successful operation of its channel; and provided further, that its right of way shall be the actual width of its channel, and not more than six hundred feet in width situated wholly or in part on either side of the channel; provided, that when the land sought to be condemned under this chapter is arable land, such right of way shall not extend further than one hundred and fifty feet on each side from the edge or boundary of said channel.

7. To construct, own and operate its channel so far into the waters of the Gulf of Mexico as may be necessary to obtain an adequate depth of water at its gulf entrance to facilitate the ingress and egress of such vessels as may navigate the same, in so far as this state may have the power to grant such right, which shall be in subordination to that of the government of the United States in as far as that government has the constitutional power to control the same.

Art. 723. [644c] Every such dock corporation shall, in addition to the powers heretofore conferred, have power—

Dock corporations; added powers.
1b.

1. To purchase, take and hold such land or real estate as shall be necessary for the construction and operation of its docks, approaches, entrances, moorings and ways; and the construction, use and enjoyment of such warehouses, stores and sheds as may be necessary to the receiving and discharging of freights, goods, wares and merchandise, and the proper protection and preservation thereof; provided, that no such dock corporation shall ever have the right or power to take or condemn to its use any private property without the free consent of the owner thereof, expressed by a sufficient deed in writing.

2. To construct its dock or docks in such manner and of such size and depth as it may deem meet and proper to suit the convenience of such vessels as may see fit to use and occupy the same, and to collect from the vessels using the same, or from their masters, owners or consignees, such sum or sums for the use thereof as may be authorized by its by-laws and agreed to by such masters, owners or consignees.

3. To borrow such sums of money as may be necessary for constructing, completing or operating its dock or docks, and to issue and dispose of its bonds for such amount so borrowed, and to mortgage its corporate property and franchises to secure the payment of any debt contracted for the purposes aforesaid.

Art. 724. [644d] Every such corporation shall, in addition to the powers heretofore conferred, have power—

Corporations created under this chapter; additional power granted.
1b.

1. To purchase, take and hold such land or real estate as shall be necessary for the construction, maintenance and operation of its harbor approaches, entrances, and ways thereto, and the construction of wharves, piers and warehouses.

2. To construct, own and maintain its harbor by building piers and breakwaters so far into the gulf as may be necessary to obtain sufficient depth of water to facilitate the ingress and egress, and the safety while in port of such vessels as may enter the same, in so far only as the state may have the power to grant such right, which, however, shall be exercised subject and in subordination to the government of the United States in as far as it may have constitutional power to control the same.

3. To provide facilities to vessels and boats entering its harbor for anchorage, receiving and discharging cargoes and passengers,

and to charge and collect fair and reasonable tolls and wharfage therefor, to be prescribed by its by-laws.

4. To borrow money in such amounts and on such terms as may be necessary for constructing and finishing or operating its harbor or piers, and to issue and dispose of its bonds for any amount so borrowed, and to mortgage its corporate franchises to secure the payment of any debt contracted for the purposes aforesaid.

Rates, tolls and charges subject to legislative control.
Ib.

Art. 725. [644f] All rates, tolls, or charges made by any corporation formed under the provisions of this chapter shall be subject to the right of the legislature from time to time to alter, revise, change or amend the same.

CHAPTER FIFTEEN.

DEEP WATER CORPORATIONS.

Article	Article
Corporations acting under authority of congress may purchase certain coast land from the state 726	Right to construct docks, etc., charge tolls, subject to railroad commission and general regulating rights of said corporations 730
May purchase certain other lands 727	Rights, powers and privileges granted shall not interfere with, what 731
Application for purchase, how made 728	Shall file release with secretary of state of right of control by congress 732
Regulating surveys, payment of purchase money, forfeitures, etc., under foregoing articles 729	

Corporations acting under authority of congress may purchase certain coast lands from the state. (Acts of 1891, p. 166.)

Article 726. Any corporation organized under the laws of Texas, which is now authorized or which may hereafter be authorized by an act of congress of the United States to construct, own, operate or maintain, with private capital, a deep water harbor, navigable channel, docks or wharves on the gulf coast of Texas, shall be permitted to purchase from the state of Texas at two dollars per acre so much of any public lands, islands, shores or shallow bays belonging to the state of Texas as may be situated within one-half mile from any point or points on the construction works of any jetties or any such deep water channel leading into the main harbor from the open sea; provided, that in no case shall such strip or body of land be more than one-half mile in width, and such company or corporation may also purchase from the state at the same price per acre any lands, shores, islands or shallow bays within one-fourth mile of each side of every navigable channel that such company or corporation may construct through or across such shallow bays in the prosecution of such work.

May purchase certain other lands.
Ib.

Art. 727. Any such company or corporation owning in whole or in part any lands fronting or abutting upon any shallow bays in which any such work is being constructed, may purchase at the same price per acre any lands, shores or shallow bays adjoining and lying in front of such lands; provided, that such purchase shall not extend into such bay so as to include land covered with water having an average depth of more than three and one-half feet at mean low tide. That the purchases under the provisions of this article shall not extend a greater distance along the front of the survey on the shore than three miles, nor a greater distance into the bay than one-half mile; provided, that the islands known as Tolly island and Lydia Ann islands, situated in Aransas bay, shall not be subject to purchase under the provisions herein; provided, that one-half of the proceeds of the sale of the lands as provided for herein shall belong to the permanent free school fund of this state.

Art. 728. All applications of a purchaser to buy under the foregoing articles shall be made in writing to the commissioner of the general land office, accompanied by one-fifth of the purchase money, and also by a copy of the act of congress authorizing the construction of such deep water harbor, navigable channel, docks or wharves, and a complete plat or map showing the location and design of such improvements, and said plat or map shall also show the public lands, shores, islands and shallow bays applied for, and the depths of such shallow bays in feet, determined by actual survey or as shown by the United States coast survey map.

Application for purchase how made.
Ib.

Art. 729. Upon the payment of one-fifth of the purchase money as hereinbefore provided, the commissioner of the general land office shall issue a receipt therefor, and attach thereto a copy of the application and plat filed by said purchaser, which said receipt shall be sufficient authority to the proper county surveyor to survey the lands, shores, islands or shallow bays sold; provided, that the remainder of the purchase money may be paid at any time within five years after date of first payment, and deferred payments shall bear interest at the rate of five per cent per annum payable annually. If any company or corporation purchasing any land, island or shallow water bays under these provisions shall fail to secure twenty feet of water over the bar between the Gulf of Mexico and the main harbor within five years from the date of such purchase and maintain said twenty feet of water continuously for two years, then all such rights shall revert to the state. If the purchaser of any island, shallow water bay, land, or either, under these articles, shall fail to pay the annual interest upon any part of the purchase money when such interest shall become due, or if such purchaser shall fail to pay the principal when the same shall become due, then all rights acquired under such purchases shall be forfeited, with all payments made thereon, without any judicial ascertainment of such forfeiture, and the commissioner of the general land office shall indorse upon the contract of purchase, that the same is forfeited, whereby all rights so acquired shall be forfeited and revert to the state. If any such corporation shall fail to conform to the act of congress in prosecuting such work, or if such corporation shall fail to secure twenty feet of water at low tide upon the bars and other obstructions between the main harbor and the Gulf of Mexico within five years after the twenty-first day of April, 1891, if such corporation then existed, or within five years of the date of the filing of the charter of any such company as hereafter formed, then all islands, lands, shallow bays and other rights acquired under this chapter shall be forfeited and shall revert to and vest in the state of Texas.

Regulating surveys, payment of purchase money, forfeiture, etc., under foregoing articles.
Ib.

Art. 730. Any corporation organized under the laws of this state, which has such authority as mentioned in article 726 conferred upon it by act of the congress of the United States, may construct, own and maintain upon the gulf coast of Texas, in connection with its deep water harbor and navigable channels, docks and wharves and navigable channels for the accommodation of commerce, and such corporation may charge, demand and receive reasonable and just tolls, and charge for the use of such docks and wharves; but all navigable channels so constructed shall forever remain open and free to all vessels without fee or charge; the tolls and charges for the use of said docks and wharves shall be equal, just and uniform to all vessels, persons and corporations without discrimination as to amount charged or

Right to construct docks, etc., charge tolls subject to railroad commission and general laws regulating rights of said corporations.
Ib.

delay in handling the same, and all such tolls and charges shall be under the control of the legislature of the state of Texas; and until otherwise directed by the legislature shall be subject to control and regulation by the railroad commission under the rules prescribed for the regulation of railroads so far as applicable. Any railroad or other means of transportation which may be constructed between the mainland and any deep water harbor or channel shall be a public highway, and all rates and charges for the transportation of freights and passengers thereon shall be subject to the control and regulation of the railroad commission as a railroad; such railroad or other means of transportation shall receive from each and every ship, boat and vessel, or from the wharf on which the same is discharged, all freights and passengers, and transport and deliver them to the consignee, or any connecting line of railroad, without discrimination as to charges or delay in transportation and delivery, and shall in like manner receive from every person and from every connecting line of railroad all freight and passengers and transport and deliver the same to each and every ship, boat, vessel, person or corporation for delivery to such ship, boat or vessel on like equal and just terms without discrimination as to charges and delay in transportation or delivery thereof. Nothing herein shall be construed to affect any rights acquired before the enactment of this law. The acceptance of the provisions herein, or the exercise of any rights or privileges granted herein, by said corporation, or any person or corporation holding under the same, shall be deemed and held to be a contract with the state; that any willful violation of these provisions, or the doing of any act herein prohibited, shall work a forfeiture of all rights acquired hereunder so far as then held or claimed by the person or corporation guilty of such violation.

Rights, power and privileges granted shall not interfere with, what.
Ib.

Art. 731. The privileges and rights granted herein shall never be exercised so as to in any way hinder or interfere with the completion of any railroad heretofore chartered to be built to and upon Harbor island, in and upon the location designated in such charter; nor with any such railroads acquiring and controlling all necessary depot grounds, wharf grounds and deep water fronts that it may or could have acquired legally had not this law been enacted.

Shall file release with secretary of state of right of control by congress.
Ib.

Art. 732. Before any rights can vest in any corporation by virtue of any purchase of public lands, islands, shores or shallow bays, the said corporation shall file with the secretary of state a release to the state of Texas of all claim or right to have its tolls or charges imposed for any use to be made of such property or structures thereon regulated by any act of congress now existing or hereafter to be passed.

CHAPTER SIXTEEN.

GUARANTY AND FIDELITY CORPORATIONS (FOREIGN
AND DOMESTIC)—REGULATION OF.

Article	Article
Certified copy of articles of incorporation to be filed with commissioner of agriculture, etc. 733	Service of process, on whom made..... 738 Commissioner of agriculture, etc., shall issue certificate to corporation to transact business 739
Copy of by-laws, and names and residences of directors, and statement of assets and liabilities and amount of capital stock, to be filed..... 734	Who are agents under this chapter..... 740 Penalty against corporation for acting without certificate of authority..... 741
Capital stock required..... 735	Statement required when corporation refuses to further guarantee fidelity of any person; penalty 742
Amount of deposit of money or securities with state treasurer required; proof of value of real estate..... 736	If corporation fails to comply with article 742, certificate to be revoked.... 743
Deposit, or real estate, subject to judgments against the corporation; not permitted to withdraw deposit or sell the real estate pending suit, or while any judgment is unsatisfied 737	Corporations created for purposes mentioned in article 733, declared charged with a public use 744

Article 733. Hereafter any corporation organized or created under the laws of this state, or of any other state or territory, or of any municipality of such state or territory, or of any foreign government, sovereignty or municipality, for the purpose of issuing surety, guaranty or indemnity bonds, guaranteeing the fidelity of persons in private offices, employments, or positions of trusts and contracts, or for acting as security on any such bonds, shall file with the commissioner of agriculture, insurance, statistics and history a certified copy of its articles of incorporation and all amendments thereto.

Art. 734. Such corporation shall file with the certified copy of articles of incorporation and amendments thereto, a copy of its by-laws, together with the names and places of residence of its officers and directors and a statement of its assets and liabilities, showing its net capital stock and of what it consists, certified to by the president or secretary thereof.

Art. 735. No such corporation shall transact any business in this state unless it is possessed of at least one hundred thousand dollars actual capital stock; and if the capital stock of such corporation consists, either in whole or in part, of bonds, mortgages, securities, or other property than money, the commissioner of agriculture, insurance, statistics and history shall require satisfactory evidence that the market value thereof is at least one hundred thousand dollars.

Art. 736. Such corporation shall, before the certificate of authority, hereafter provided for, is issued, deposit with the treasurer of this state, money or bonds or other securities, to be approved by the commissioner of agriculture, insurance, statistics and history to the amount of twenty-five thousand dollars, or shall produce satisfactory proof that such corporation owns real estate in this state the value of which shall be not less than twenty-five thousand dollars.

Art. 737. The deposit or real estate required by the preceding article shall be held liable to pay any judgments that may be rendered against such corporation; and may be so decreed by the court rendering judgment against it. Nor shall such company be permitted to withdraw its deposit from the state treasury or to sell its real estate while any suit is pending or any judgment against it in this state remains unsatisfied.

Certified copy of articles of corporation to be filed with commissioner of agriculture, etc. (Acts of 1891, p. 176.)

Copy of by-laws and names and residences of directors and statement of assets and liabilities, amount of capital stock to be filed. Ib.

Capital stock required. Ib.

Amount of deposit of money or securities with state treasurer required; proof of value of real estate. Ib.

Deposit of real estate subject to judgment against the corporation, etc. Ib.

Service of process, on whom made.
Ib.

Art. 738. Such corporation shall file with the certified copy of its articles of incorporation a power of attorney under its corporate seal, authorizing the commissioner of agriculture, insurance, statistics and history, or some designated agent, to accept service of any civil process for and on behalf of such corporation, and consenting that the service of any civil process upon the commissioner of agriculture, insurance, statistics and history, or designated agent, as the case may be, in any suit or proceeding in which the corporation is a party, shall be taken and held to be valid. Said power of attorney shall be embodied in a resolution duly adopted by said corporation, and shall be signed by the president, manager or secretary thereof officially. If any agent other than the commissioner of agriculture, insurance, statistics and history be designated by said power of attorney, he shall be a citizen of this state, and his full name and place of residence shall be stated in the power of attorney.

Commissioner of agriculture, etc., shall issue certificate to corporation to transact business.
Ib.

Art. 739. When any such corporation has complied with the provisions of this chapter, the commissioner of agriculture, insurance, statistics and history shall issue his certificate of authority authorizing said corporation to transact business in this state.

Who are agents under this chapter.
Ib.

Art. 740. Any person who solicits business for or on behalf of such corporation or makes or transmits for any person other than himself any application for guaranty or security, or who advertises or otherwise gives notice that he will receive or transmit the same, or who shall receive or deliver a contract of guaranty or security, or who shall examine or investigate the character of any applicant for guaranty or security than himself, or who shall refer any applicant for guaranty or security to such corporation, whether any of said acts shall be done at the instance and request or by the employment of such corporation, or other corporation or person, or any person who shall issue indemnifying bonds or contracts, whose solvency and compliance with his said bonds or obligations is guaranteed, directly or indirectly, by any corporation, shall be held to be the agents of the corporation so far as relates to all the liabilities and penalties prescribed by this chapter.

Penalty against corporation for acting without certificate of authority.
Ib.

Art. 741. Any persons, association of persons or corporation, who shall accept any corporation created for the purposes, or either of them, mentioned in article 733 of this chapter, without such corporation having previously complied with the provisions and requirements of this chapter, and having received from the commissioner of agriculture, insurance, statistics and history, the certificate of authority provided for in article 739 of this chapter, shall forfeit as a penalty the sum of five hundred dollars, to be recovered by suit in the name of the state in any court of competent jurisdiction.

Statement required when corporation refuses to further guarantee fidelity of any person; penalty.
Ib.

Art. 742. When any corporation shall cancel a bond of guaranty or indemnity, or shall notify the employer of the person whose fidelity is guaranteed, that said corporation will no longer guarantee or be security for the fidelity of said person, or when said corporation has once guaranteed the fidelity of any person, or acted as security therefor, and on application refuses to do so again, it shall furnish to such person a full statement in writing of the facts on which the action of the corporation is based, and if such actions be based in whole or in part on information, all such information, together with the name or names of the informants, with their place of residence, and any such corporation failing or refusing to furnish such written statement within thirty days after a request therefor,

shall be liable to the person injured in the sum of five hundred dollars, in addition to all other damages caused thereby, which may be sued for and recovered in any court of competent jurisdiction.

Art. 743. If any such corporation shall fail or refuse to comply with the provisions of article 733 of this chapter, the commissioner of agriculture, insurance, statistics and history shall revoke the certificate of authority issued to said corporation.

If corporation fails to comply with. Ib.

Art. 744. Corporations created for the purposes mentioned in article 733 of this chapter, are hereby declared to be charged with a public use.

Corporations charged with public use. Ib.

CHAPTER SIXTEEN A.

TO CONSTRUCT UNION DEPOTS.

Article	Article
Corporations to construct union depots, how formed	Laws controlling; railway companies may own stock
744a	744b

Article 744a. Corporations may be formed for the purpose of acquiring, owning, constructing and operating union passenger depots at any point in the state of Texas where two or more railroads now or hereafter intersect. Such corporations may be formed in the manner provided in this title of the revised statutes of the state of Texas, and shall have all the powers and be subject to all of the restrictions and requirements of the said title.

Corporations to construct union passenger depots, how formed. (Acts 1895, p. 187.)

Art. 744b. The provisions of chapter fourteen, title XCIV. of the revised statutes of the state of Texas shall govern and control the issuance of stock and bonds by such companies as far as the same are applicable. Railroad companies existing under the laws of this state, whether under special act or charter, or whether incorporated under the general laws of the United States, are authorized and empowered to subscribe for stock and purchase and own stock or bonds of any depot company formed under the authority of this chapter.

Laws controlling; railway companies may own stock. Ib.

CHAPTER SEVENTEEN.

CORPORATIONS—FOREIGN.

[For serving process upon, see Article 1223. For venue of suits against, see Article 1194.]

Article	Article
Foreign corporations for pecuniary profit required to file copy of its articles with secretary of state.....	Corporations exempted from provisions hereof
745	747
No such corporation can maintain any suit or action unless complying with provisions hereof	Permit to extend for period of ten years
746	748
	Evidence
	749

Article 745. Hereafter any corporation for pecuniary profit, except as hereinafter provided, organized or created under the laws of any other state, or of any territory of the United States, or any municipality of such state or territory, or of any foreign government, sovereignty or municipality, desiring to transact business in this state, or solicit business in this state, or establish a general or special office in this state, shall be and the same are hereby required to file with the secretary of state a duly certified copy of its articles of incorporation, and thereupon the secretary of state shall issue to such

Foreign corporations for pecuniary profit required to. (Acts of 1889, p. 87.)

corporation a permit to transact business in this state. If such corporation is created for more than one purpose the permit may be limited to one or more purposes.

No such corporation can maintain any suit, etc.
Ib.

Art. 746. No such corporation can maintain any suit or action, either legal or equitable, in any of the courts of this state upon any demand, whether arising out of contract or tort, unless at the time such contract was made or tort committed the corporation had filed its articles of incorporation under the provisions of this chapter in the office of the secretary of state for the purpose of procuring its permit.

Corporations exempted from provisions hereof.
Ib.

Art. 747. The provisions of this chapter shall not apply to corporations created for the purpose of constructing, building, operating, or maintaining any railway, or to such corporations as are required by law to procure permits to do business from the commissioner of agriculture, insurance, statistics and history.

Permit to extend for period of ten years.
Ib.

Art. 748. No permit shall be issued for a longer period than ten years from the date of filing such articles of incorporation in the office of the secretary of state.

Evidence.
Ib.

Art. 749. Either the original permit or certified copies thereof by the secretary of state shall be evidence of the compliance on the part of any corporation with the terms of this chapter. A certificate of the secretary of state to the effect that the corporation named therein has failed to file in his office its articles of incorporation shall be evidence that such corporation has in no particular complied with the requirements of this chapter.

CHAPTER EIGHTEEN.

PERPETUITIES.

	Article		Article
Corporate acquisition of speculative lands prohibited	749a	Forfeiture prescribed; duty of attorney-general	749d
Present corporate holdings to be alienated	749b	Proceeds of such forfeiture to be covered into the treasury	749e
Holdings of other corporations restricted	749c		

Corporate acquisition of speculative lands prohibited.
(Acts 1893, p. 36.)

Article 749a. No private corporation heretofore or hereafter chartered or created whose main purpose of business is the acquisition or ownership of land by purchase, lease, or otherwise, shall hereafter be permitted to acquire any land within this state by purchase, lease, or otherwise.

Present corporate holdings to be alienated.
Ib.

Art. 749b. All private corporations whose main purpose or business is the acquisition or ownership, by purchase, lease, or otherwise, of lands in this state, shall, within fifteen years from the time this law takes effect, make an actual bona fide sale of all lands, or interest therein acquired, before this law takes effect, and shall within said fifteen years, by proper deed, convey in good faith all their right and title to said land. And lands acquired by corporations in payment of debts due such corporation shall be sold and conveyed as herein provided within fifteen years from the date of the acquisition of such land.

Holdings of other corporations restricted.
Ib.

Art. 749c. All private corporations authorized by the laws of Texas, as provided in article 642, to do business in this state, whose main purpose is not the acquisition or ownership of lands, as mentioned in the preceding articles, which have heretofore or may hereafter acquire, by lease, purchase, or otherwise, more land than is

necessary to enable them to carry on their business, shall, within fifteen years from the time this law takes effect, or the date said land may be hereafter acquired in good faith sell and convey in fee simple all lands so acquired, and which are not necessary for the transaction of their business. And no private corporation shall be permitted to purchase any land under the provisions of this and the preceding articles unless the lands so purchased are necessary to enable such corporation to do business in this state, or except where such land is purchased in due course of business to secure the payment of debt; provided, that nothing in this law shall be construed to prohibit the lease, purchase, sale, or subdivision of lands within incorporated towns, cities, or villages, and the suburbs of such towns, cities, and villages, within two miles from the limits of said incorporation in any direction.

Art. 749d. All corporations holding lands contrary to the provisions of this law shall hold the same subject to the forfeiture and escheat proceedings, and it shall be the duty of the attorney general, or other attorney appointed by the governor for that purpose, when he is informed or has reason to believe that any corporation is holding lands in violation of this law, to institute suit in the name of the state of Texas, in the district court of Travis county, or in the district court of any county in Texas where such corporation may have an agent, or in any county where any part of the land may be situated, against such corporation, as is provided in title 38, in the Revised Civil Statutes of Texas, for the escheat of estates of deceased persons dying without devise thereof and having no heirs.

Art. 749e. If it shall be determined upon the trial of said suit that lands are held contrary to this law, the court trying said cause shall enter judgment condemning such lands and ordering them to be sold as under execution. The proceeds of such sale to be applied, first, to the payment of costs of such suit, and balance to be paid into the state treasury, subject to be paid to the stockholders, or persons entitled to receive the same as owners, upon proper proof made within twelve months from date of sale, and if the legal representatives of such corporation fail to claim the said balance of money realized on sale of said land, then it shall escheat absolutely to the state and be applied to the available school fund of the state of Texas. The court trying said cause shall allow the attorney representing the state a reasonable fee, to be taxed as cost in the suit, but in no case shall the state be liable for costs or fees unless it is successful in said suit.

Forfeiture prescribed; duty of attorney-general. Ib.

Proceeds of such forfeitures to be covered into the treasury. Ib.

TITLE XXII.

Counter Claim.

	Article		Article
Counter claim may be pleaded	750	Certain and uncertain damages not to	
Requisites of the plea	751	be set off against each other.....	754
Judgment in defendant's favor, when....	752	Matters incident to plaintiff's demand	
Judgment for costs determined, how....	753	may be set off.....	755

Counter claim may be pleaded, when. (Act Feb. 5, 1840, p. 62.) P. D. 3443.

Article 750. [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. 751. [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. 752. [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. 753. [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. 754. [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. 755. [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 XXIII.

Counties and County Seats.

CHAPTER ONE.

CREATION OF COUNTIES.

	Article		Article
Legislature may create counties.....	756	When territory is added, duty of commissioners in organized counties.....	767
Must have nine hundred square miles, unless, etc.	757	Tax for pro rata indebtedness.....	768
Exterior territory may be divided into counties at any time.....	758	Tax collected in unorganized counties by comptroller	769
Counties created out of other counties must have seven hundred square miles	759	County bonds held by school funds apportioned between counties, when....	770
Line of new county shall not approach nearer than twelve miles to an established county seat	760	Commissioners' court to levy tax for, pro rated	771
Counties with less than nine hundred square miles may be created, how....	761	Part of existing county shall not be detached, etc., except, etc.....	772
Existing counties may be reduced to seven hundred square miles, how....	762	Election shall be ordered, when, etc....	773
New county shall pay its part of the liabilities of the old county.....	763	Application shall show, what.....	774
New counties to pay pro rata of indebtedness	764	Notices of such election shall contain, what	775
Such indebtedness, how apportioned....	765	Question to be voted upon.....	776
Suits to have precedence; special tax to pay judgments	765a	Law governing other elections shall govern this	777
Non-residents to pay to comptroller....	766	Returns of election, how and to whom made	778
		Another election for the same purpose shall not be held for five years.....	779

Article 756. [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. 757. [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. 758. [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. 759. [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. 760. [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. 761. [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.

Existing coun-
ties may be re-
duced to 700
square miles,
how.
Ib.

Art. 762. [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.

New county
shall pay its
part of the
liabilities of
the old county.
Ib.

Art. 763. [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 shall provide.

New counties
to pay pro rata
of indebt-
edness.
(Acts of 1893,
p. 124.)

Art. 764. Any county which has heretofore been created, or may hereafter be created, by the legislature of the state of Texas, out of any other county or counties, shall be held liable for and bound to pay its proportion of all the liabilities of the county or counties from which it was taken, existing at the date of its creation of such new county, according to the proportionate value of the property in the excised territory, and the value of the property remaining in the old county, and a suit to recover the same may be brought by the parent county either in the district court of such parent county or in the district court of the newly created county, and the court shall have power to make any order or render any judgment necessary to carry out and satisfy its decree therein; provided, that the provisions of this article shall not apply to any county the claims against which have already been placed before courts having jurisdiction thereof and tried or dismissed under laws that were at such time constitutional.

Such indebted-
ness, how ap-
portioned.
Ib.

Art. 765. Where any suit has been or shall be brought to enforce payment of the indebtedness created by the parent county or counties, or for the pro rata share of the excised territory, the assessment rolls of the parent county or counties for the year in which such new county was created shall be conclusive evidence of the property and value thereof remaining in the parent county and in the excised territory at the date of the creation of such new county; provided, that when the new county was organized and made assessment rolls for the same year as that in which it was created, such rolls shall be taken as conclusive evidence of the property therein and the taxable values thereof at the date of the creation of such new county, and the assessment rolls of the parent county for the same year shall be conclusive evidence of the property and the value thereof remaining in the parent county at the date of the creation of such new county.

Suits to have
precedence;
special tax to
pay judg-
ments.
Ib.

Art. 765a. All suits brought under this law are hereby declared to be of general public interest, and shall be given precedence upon the dockets of the courts of this state; and if the plaintiff shall recover, it shall be the duty of the commissioners' court of the newly created county to levy a special tax on all property in the territory taken from the plaintiff county sufficient to pay off the judgment, and if the first levy be insufficient, to make said levy annually till said judgment is satisfied, and the judgment of the court shall order said commissioners' court to make such levies.

Non-resi-
dents to pay to
comptroller.
(Acts of 1889,
p. 136.)

Art. 766. It shall be the duty of the comptroller of public accounts to assess and collect from the non-residents of unorganized counties such rate of taxation, to pay the pro rata share of the debt due by such unorganized county, as the commissioners' court of the parent county shall levy on property in said parent county to pay such debt, and a certified statement of the commissioners' court making the levy in the parent county, giving the amount of the levy, shall be authority for his action.

Art. 767. When the territory taken is added to and made a part of an organized county, it shall be the duty of the commissioners' court of such county to levy and have collected on all property in such territory a tax sufficient to pay their pro rata of the indebtedness, said tax not to exceed the constitutional limit; and it shall be the duty of the commissioners' court of the county to which any unorganized county may be attached for judicial purposes to levy and have collected on all property in such unorganized county owned or held by resident citizens a tax for the purpose of paying such indebtedness.

When territory is added, duty of commissioners in organized counties.
Ib.

Art. 768. When any county has organized, it shall be the duty of the commissioners' court of such county to levy and have collected on all property in this county such rate of taxation to pay the pro rata share of the debt due by such county as the commissioners' court of the parent county shall levy on property in said parent county to pay such debt.

Tax for pro rata indebtedness.
Ib.

Art. 769. All county taxes due unorganized counties collected by the comptroller shall be kept by him to the credit of such unorganized county until the same shall have been organized; then he shall, upon demand of the treasurer of the former unorganized county, pay the same over to the said treasurer; provided, that in case any unorganized county is indebted to any county from which the same has been created, and which debt existed at the time of its creation, the comptroller shall use so much of said fund as may be necessary to pay the pro rata share of such debt due by such unorganized county, and an order of the commissioners' court of the parent county stating the amount due from the unorganized county shall be authority for the comptroller to draw his warrant for said amount, and the provisions of this article shall apply to all money now held by the comptroller for unorganized counties and to all money hereafter collected.

Tax collected in unorganized counties by comptroller.
Ib.

Art. 770. When any new county has been created wholly and entirely out of any existing county, if any bonds were legally issued by the parent county prior to the severance of a part of its territory, such of said bonds and the coupons due thereon as are held by the school fund of the state of Texas shall be apportioned between the parent county and the county or counties created out of the parent county by the comptroller of public accounts on the basis now provided by law.

County bonds held by school funds apportioned between counties, when. (Acts of 1891, p. 39.)

Art. 771. It shall be the duty of the commissioners' court of the parent county or any county created out of the parent county, which has now or may hereafter be organized, to levy and have collected on all property in such county a tax to pay such county's pro rata share of the debt. It shall be the duty of the commissioners' court of any county to which any unorganized county may be attached for judicial purposes, to levy and have collected on all property in said unorganized county owned by resident citizens thereof a tax for the purpose of paying said county's part of the debt; and it shall be the duty of the comptroller of public accounts to assess and collect on all property in such unorganized counties owned by non-residents a tax to pay said counties' pro rata part of said debt; provided, that nothing herein shall be construed to authorize the levy and collection of any tax in excess of that now allowed by the constitution of this state.

Commissioners' court to levy tax for pro rated.
Ib.

Art. 772. [659] No part of any existing county shall be detached from it and attached to another existing county until the

Part of existing county shall not be detached, etc., except, etc. (Const., art 9.)

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. 773. [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. 774. [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. 775. [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. 776. [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. 777. [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. 778. [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 election for same purpose shall not be held for five years.

Art. 779. [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.

	Article		Article
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Election to be ordered, when and by whom	781	Certificates of election in such cases.....	786
County commissioners may act, when..	782	Books, etc., shall be delivered to such officer	787
New county subject to old until organized	783	Elections in organized counties.....	788
Disorganized county is to be attached to	784		

Article 780. [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.

Old county shall organize new one. (Act March 20, 1848.) P. D. 1063.

Art. 781. [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. 782. [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. 783. [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. 784. [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, 1866, p. 90.)

County attached to another may be organized, how. (Act May 1, 1874, p. 188, §2.)

Art. 785. [672] When any unorganized or disorganized county has been attached to another county for judicial or other purposes, and desires to be organized or reorganized, 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.

Certificates of election of such cases shall be issued by whom and bonds taken, etc. lb. §3.

Art. 786. [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.

Books, etc., shall be delivered to such officers. lb. §4.

Art. 787. [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.

Elections in unorganized counties. (Act March 26, 1848.) P. D. 3624.

Art. 788. [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
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Inhabitants of, may be jurors, etc., in such suits	791	Suits on notes, etc., by county.....	796
Execution shall not issue against county	792	Agents to contract for county may be appointed	797
Deeds, grants, etc., to counties valid ...	793	Costs in suit against county.....	798

County a body corporate. (Act May 11, 1846.) P. D. 1044. Suits against. P. D. 1045.

Article 789. [676] Each county which now exists, or which may be hereafter established, shall be a body corporate and politic.

Art. 790. [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. P. D. 1049.

Art. 791. [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.

Art. 792. [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.

Execution shall not issue against county.
P. D. 1050.

Art. 793. [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.

Deeds, grants, etc., to counties valid, etc.
P. D. 1051.

Art. 794. [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.

Commissioners to sell real estate of.
P. D. 1052.

Art. 795. [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.

Contracts with a county valid.
P. D. 1053.

Art. 796. [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.
P. D. 1054.

Art. 797. [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.
P. D. 1055.

Art. 798. [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.
P. D. 1056.

CHAPTER FOUR.

COUNTY LINES.

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Boundary, how marked	800	Commissioner of the land office to direct survey in a case of disagreement.....	806
Natural objects to be named.....	801	Expenses to be divided between the counties	807
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Survey made.
(Acts of 1879,
p. 137.)

Article 799. Whenever it shall appear to the satisfaction of the county court of any county in this state, or notice shall be given such court by the commissioner of the general land office, that the boundary or any part thereof of the county is not sufficiently definite and well defined, such court shall appoint an experienced and competent practical surveyor, whose duty it shall be to ascertain, by actual survey, the boundary, or any part thereof, of said county, and to make and establish the lines and corners in a manner herein prescribed; and the court in the order making the appointment shall specify the line or lines to be run, and the corners to be established and marked; and shall in all things conform to the law defining the boundaries of said county.

Boundary,
how marked.

Art. 800. The initial corners of the surveys herein provided for shall be designated by posts, mounds or stone monuments; the posts shall be of hewn cedar, cypress or bois d'arc, at least eight inches in diameter, five feet long, and set in the ground not less than three feet; the mounds shall be of stone when practicable, otherwise of earth, and not less than two feet high; that at the end of each mile in said boundary a like post, mound or stone monument shall be established; the initial corners shall be described on the post or monument established there.

Natural ob-
jects to be
named.

Art. 801. In the field notes of the surveys of the lines ordered to be run, the surveyor shall give an accurate description of all prominent natural objects crossed by or adjacent to said lines, as well as of the corners and lines of surveys on or near said boundaries.

Notice to other
counties.

Art. 802. It shall be the duty of the court making such order to cause a copy thereof to be sent to the county courts of the counties interested in such boundary, stating the time and place, which time shall not be later than twenty days after the meeting of the county court of the county notified, for the commencement of the survey, and such notice shall be given at least ten days before the meeting of said county court; and it shall be the duty of the court so notified to appoint an experienced and competent practical surveyor to proceed at the time and place to assist in running and establishing such line.

Oath and bond
of surveyors.

Art. 803. The surveyors herein provided for shall take the oath of office prescribed by law for county surveyors, and shall, before entering upon the duties herein prescribed, enter into bond with two or more sureties to be approved by the county court, in the sum of one thousand dollars, payable to the county judge or his successors in office, conditioned for the faithful performance of his duty.

Field notes to
be returned
and recorded.

Art. 804. When the line shall have been surveyed and marked as herein provided, it shall be the duty of the surveyor to make due

return of the field notes and map to the county court; which field notes and map shall be recorded by the clerk, and a certified copy thereof returned to the general land office.

Art. 805. If either of the surveyors 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 county court of the county employing him, 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 boundary line between the counties.

In the absence of one surveyor the other shall act.

Art. 806. Should the surveyors above provided for fail to agree as to the true boundary line between their respective counties, the facts of such disagreement, with a full statement of the questions at issue between them, shall be by them reported to the commissioner of the general land office, whose duty it shall be to examine the disputed matter at once, and from such data as the maps and archives of his office furnish, shall designate to such surveyors the line to be run, stating at what specific point they shall begin and to what specific point they shall run, adhering as nearly as possible to the line designated in the act creating such county line, which instruction shall be authority for said surveyors to run such line, and the line so run as above directed shall thereafter be the true dividing line between said counties.

Commissioner of the land office to direct survey in case of disagreement. (Acts of 1879, p. 137.)

Art. 807. The expense of surveying and marking such line shall be divided between the counties interested in proportion to the frontage of each county upon the line, and paid for by each county as proportioned. The surveyors appointed as herein provided shall receive for their services the sum of three dollars per mile for each mile run. The expense of establishing the posts, mounds or stone monuments shall be paid by the counties interested, and they shall be erected under the supervision and direction of the surveyor.

Expense to be divided between counties.

Art. 808. Before any county in this state not already organized as a separate land district under existing law shall be recognized as such, the county court shall cause the boundary lines of the county to be surveyed and marked and the field notes and map of such survey, duly recorded, returned to the general land office as provided in this chapter.

Land districts to be surveyed.

CHAPTER FIVE.

COUNTY SEATS.

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Who may vote and form of ballot.....	814	County offices at county seat.....	821
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Article 809. In the organization of any county or counties now existing or hereafter to be created by the legislature, it shall be the duty of the county judge holding the election in such new county for county officers thereof to order an election for the location of a county seat therein, which shall be conducted in the same manner as that regulating the election of the officers of such new county, and the

Election for county seats. (Acts of 1883, p. 82.)

place receiving a majority of all the votes cast by the electors voting on the location of such county seat shall thereafter be the county seat of such county, subject to be removed as other county seats; provided, that when any county has been organized and no county seat has been located the county judge of such county shall order an election for the location of a county seat.

Two-thirds vote necessary, when, to create. (Acts of 1881, p. 67.)

Art. 810. [694a] No county seat first established in a newly organized county shall be located at any point more than five miles from the geographical center of any county in this state, unless by a two-thirds vote of all the electors voting on the subject in said county.

Election for removal of, when. (Acts of 1879, p. 84.)

Art. 811. Hereafter no county seat situated within five miles of the geographical center of any county shall be removed except by a vote of two-thirds of all the electors in said county voting on the subject; nor shall any county seat be removed from a point more than five miles from the geographical center of any county to any other point more than five miles from such center, nor from a point within five miles of the geographical center to any other point within five miles of such center, except by a two-thirds vote of all the electors in said county voting on the subject; provided, that no person shall be allowed to vote except he be a bona fide citizen of the county in which he offers to vote. A majority of said 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; in either event the center to be determined by a certificate from the commissioner of the general land office, in the manner hereinafter set forth.

Application made, how and when. (Acts 1893, p. 164.)

Art. 812. When it becomes desirable to remove the county seat of any county, it shall be the duty of the county judge of said county, or in case of his failure or inability to act, then any two of the county commissioners of said county, upon the written application of not less than one hundred freeholders, who are resident citizens of said county thereof, to make an order in writing upon the minutes of said commissioners' court, for the holding of an election at the various voting precincts in said county, on a day therein named, which shall not be less than thirty nor more than sixty days from the date of said order, for the purpose of submitting the question to the electors of said county; provided, that when a county seat has been established for a longer term than ten years, it shall require two hundred freeholders to make said application; provided further, that when a county seat has been established for a longer term than forty years, it shall require a majority of the resident freeholders of said county to make said application; said majority of freeholders to be ascertained by the county judge, or in case of his failure or inability to act, then by any two of the county commissioners of said county, from the assessment rolls thereof.

Geographical center, how designated. (Acts of 1879, p. 84.)

Art. 813. The commissioner of the general land office, upon being notified by the county judge of any county that a proposition is submitted to the people of such county, or that it is desirable on the part of the people thereof, that the center of such county should be designated, preliminary to the removal of any county seat, shall from the maps, surveys and other data on file in his office, designate the center of such county, and shall certify the same to the county judge of such county, who shall cause the same to be spread upon the records of deeds of his county.

Art. 814. All persons who are qualified electors under the constitution and laws of the state shall be entitled to vote at said election, and on each ticket the voter shall write or cause to be written or printed: "For removal to ——" [inserting the name of the place]; or, should the voter be in favor of the county seat remaining where the same is already located, he shall write or cause to be written or printed on his ticket: "For remaining at ——" [inserting the name of the place].

Who may vote and form of ballot.
Ib.

Art. 815. The county judge or commissioners shall order said election in each voting precinct in said county, which shall be conducted, as near as may be, as elections for county officers; and the officers holding the election shall make return thereof to the officer ordering said election within ten days after the same was held, who shall then proceed to open said returns and count the same, and declare the result, which shall be entered upon the records of said commissioners' court, and shall also state the name of the place from which the same is removed, and the name of the place to which the same is removed; and a certified copy of such entry shall thereupon be, by the county clerk of said county, recorded in the proper record deeds of such county.

Election, how conducted and ordered.
Ib.

Art. 816. When the entry mentioned in the preceding article has been made, the county seat, if the election be held to move the county seat from a point within five miles of the geographical center, to a point more or less than five miles from the geographical center, or from a point more than five miles from the geographical center, to any other point more than five miles from such center, shall be removed to the place receiving the votes of two-thirds of all the electors voting on the subject, and such place shall thereafter be the county seat of such county. But if the election be held to move the county seat from a point more than five miles from the geographical center to a point within five miles of such center, then the county seat shall be moved to the place receiving a majority of all the electors in the county voting at such election, and such place shall thereafter be the county seat of such county.

County seats removed, when.
Ib.

Art. 817. Whenever an election for the location or removal of a county seat shall have been voted on by the electors of any county, and the question settled by said electors, it shall not be lawful for a like application to be made for the same purpose within five years thereafter.

No change by election until after five years.
Ib.

Art. 818. [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. 819 [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. 820. Until the county seats of new counties are established as required by the provisions of this chapter, the courts of such new counties shall be held at such place as may be appointed by the county commissioners' court of such county.

When commissioners' court may fix place of holding court. (Acts of 1879, p. 84.)

Art. 821. [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 XXIV.
County Boundaries.

Boundaries as established, adopted, and acts creating, continued in force.....822 Article

Boundaries as established, adopted, and acts creating continued in force.

Article 822. The county boundaries of the counties in this state as now recognized and established are adopted as the true boundaries of such counties, and the acts creating such counties and defining the boundaries are continued in force.

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Article 823. [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 commissioners' court to procure ledger, etc.

Art. 824. [935] It is hereby made the duty of the clerk of the county court to open and keep in said book, which shall be known as a finance ledger, 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 necessary to carry out the purposes of this title; that all items shall be entered daily under their respective heads, and said finance ledger shall be at all times subject to the inspection of the public. Duty of county clerk to keep accounts. (Act 1893, p. 160.)

Art. 824a. [935a] It shall be the duty of the said clerk to balance each account so kept, and make a tabular statement, under Same. Ib.

oath, at each regular term of the commissioners' court for the three months next preceding the month when such court meets in regular session, to be presented to said court during the second day of its term, specifying therein the names of the creditors of said county, and the items of indebtedness, with their respective dates of accrual, and also the names of persons to whom moneys have been paid, with the amounts paid each; the names of persons from whom moneys have been received, with the date of receipt, and for what account received, during the quarter for which such statement is prepared; said statement shall also show the amount to the credit or debit of each fund separately.

Same.
ib.

Art. 824b. [935a] It shall be the duty of said clerk immediately after the first regular term of the commissioners' court in each year to publish for one time in some weekly newspaper published in his county (or if there be no paper published therein, then by posting four copies of such exhibit, one in each commissioner's precinct, one of which shall be at the court house door, the other three at public places in such precincts), an exhibit showing the aggregate amount received and the aggregate amount paid out of each fund for the four preceding quarters, and the balance to the credit or debit of each fund; also the amount of indebtedness of said county, with their respective dates of accrual, and to whom and for what due; also the amount to the debit or credit of each officer or other persons with whom an account is kept. The cost for publishing the same shall be paid by order of the commissioners' court out of the general fund of the county.

Compensa-
tion of clerk.

Art. 824c. [935b] The clerk shall receive annually as compensation for the labor performed in keeping the finance ledger as provided for in article 824, and making the quarterly statement as provided for in article 824a, the sum of five dollars for each one thousand dollars tax assessed as due the county, to be paid quarterly on order of the commissioners' court out of the general fund of the county; provided, the same be not less than one hundred nor more than two hundred and fifty dollars per annum.

Accounts shall
be opened
how, and shall
be indexed.

Art. 825. [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. 826. [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 the fund entered therein, and the year for which the same is assessed.

Receipt of
collector for
tax rolls.

Art. 827. [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.

How the col-
lector may dis-
charge his
indebtedness.

Art. 828. [939] The collector shall discharge said indebtedness within the time prescribed by law, by filing with said clerk receipts for the same, as follows:

1. The commission 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. 829. [940] The collector shall make separate lists of the indigent and delinquent taxpayers, showing their names, and the amount 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 accounts.

Collector shall make separate lists of indigent and delinquent taxpayers, etc.

Art. 830. [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. 831. [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. 832. [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. 833. [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. 834. [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. 835. [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.

Art. 836. [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.

What the reports shall state, etc.

Art. 837. [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 occupation tax account with collector.

Clerk shall keep account with sheriff.

Art. 838. [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. 839. [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, etc., shall report fines, judgments and jury fees monthly. (Acts of 1887, p. 36.)

Art. 840. [951] Clerks of the district and county courts, county judges, county treasurers, sheriffs, district and county attorneys, constables and justices of the peace, who shall collect or handle any money for the use of the county, shall make a full and complete report, under oath, in writing, to the commissioners' court, at each regular term thereof, of all fines imposed and collected and all judgments rendered and collected for the use of the county, and all jury fees collected in their respective courts in favor of or for the use of the county; and at the same time to present their receipts and vouchers showing what disposition has been made of the money collected, fines imposed and judgments rendered; which reports, receipts and vouchers shall be carefully examined by the said commissioners' court, and if found to be correct, shall cause the clerk to enter the same on the financial ledger, and if found to be incorrect, shall summon said officer before them, and have the same corrected; and said reports, receipts and vouchers shall be filed in the county clerk's office.

What the reports shall show.

Art. 841. [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. 842. [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. 843. [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.

Art. 844. [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.

County attorney shall make report.

Art. 845. Whenever the principal and sureties upon any judgment, the proceeds of which revert to, and belong to, any county, are insolvent so that under any existing process of law said judgment, or any part thereof can not be collected, the commissioners' court of said county are hereby constituted a board to dispose of such judgment, and are hereby empowered and authorized, by such advertising as they may deem necessary, to offer for sale as they may deem to be the best interests of the county all the right of the county to such judgment. And if by public sale, if the amount bid on the same should not be deemed sufficient they shall refuse to accept the same, and dispose of the same in any manner deemed by them most advantageous to the interest of the county, and upon sale shall make a proper assignment of said judgment to the purchaser.

Judgment not collectible may be sold. (Acts of 1879, p. 9.)

Art. 846. [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.

Any officer collecting money for county shall report the same.

Art. 847. [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. 848. [958] There shall also be kept in the ledger, provided for in article 823, 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. 849. [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. 850. [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. 851. [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 treas-

County treasurer shall register claims against the county.

urer, 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.

Claims shall be classified.

Art. 852. [962] Claims against a county shall be registered in three classes, as follows:

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.

Manner of registering claims.

Art. 853. [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.

What shall be written on registered claim.

Art. 854. [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.

Claims shall be numbered, in what order.

Art. 855. [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.

Order in which claims shall be paid.

Art. 856. [966] The treasurer shall pay off the claims in each class in the order in which they are registered.

Classification of county funds. (Const., art 16, §24.)

Art. 857. [967] The funds received by the county treasurer shall be classed as follows:

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 852.

2. All money received under any of the provisions of the road and bridge law, including the penalties recovered from railroads for failing to repair crossings, prescribed in article 4435, 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. 858. [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. 859. [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 857, unless there is an excess of such funds.

County treasurer shall report registered claims each month.

Art. 860. [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. 861. [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.

Art. 862. [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.

Party receiving payment of claim shall receipt thereon.

Art. 863. [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.

Officer receiving claim in payment of debt to county shall report list of same.

Art. 864. [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.

Claims received by other officer than county treasurer shall be reported to county treasurer.

Art. 865. [975] The county treasurer shall keep accurate accounts showing all the transactions of his office in detail, and all warrants by him paid off shall be punched at the time he pays them, 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 amount thereof.

County treasurer shall keep accounts, etc. (Acts of 1889, p. 6.)

Art. 866. [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.

Claim shall be cancelled, when and how.

Art. 867. [977] When the commissioners' court has compared and examined a report of the treasurer and found the sum 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.

Order of court approving treasurer's report.

Art. 868. [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. 869. [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.

District judge shall appoint committee to examine into finances of county.

Art. 870. [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.

Duty of such committee.

Art. 871. [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.

Report of committee.

Art. 872. [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.

Pay of committee.

Art. 873. [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.

All reports shall be sworn to.

Art. 874. [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.

Monthly reports shall be filed, when.

Art. 875. [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.

Warrants issued against county by judge or court shall be attested by clerk, etc.

Art. 876. [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 article 1124 of the Code of Criminal Procedure.

CHAPTER TWO.
MUNICIPAL BONDS.

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[Note.—The Acts of March 27, 1885, p. 56; of 1881, p. 5; of 1887, p. 135; and of 1879, p. 43, relating to issuance by counties of court house, jail and bridge bonds, were embraced in the codification of 1893 as Articles 877 to 889 inclusive. Those articles are expressly repealed by the Act of 1895, p. 113, the provisions of that Act substituting Articles 877 to 883 inclusive.]

Article 877. The county commissioners' court of any county in this state is hereby authorized and empowered to issue the bonds of said county for the following purposes:

1. For the erection of a county court house and jail, or either.
2. For purchasing or constructing bridges for public purposes, within the county or across a stream that constitutes a boundary line of the county.

Art. 878. All bonds issued under this law shall run not exceeding forty years, and shall be redeemable at the pleasure of the county any time after five years after the issuance of the bonds, or after any period not exceeding ten years, which may be fixed by the commissioners' court.

Art. 879. Said bonds shall draw interest at a rate not exceeding six per cent per annum, payable on the tenth day of April; or interest may, in the discretion of the commissioners' court, be made payable semi-annually, on the tenth day of April and the tenth day of October, respectively. Interest shall be evidenced by attached coupons.

Art. 880. The issue of bonds under this chapter shall be based upon the taxable values of the county according to the last approved assessment, and shall be limited as follows: Court house and jail bonds shall be limited to an amount not exceeding two per cent

Court house, jail and bridge bonds, authorized. (Acts 1893, p. 112.)

To run not exceeding forty years; redeemable when. Ib.

Interest on such bonds. Ib.

Bonds to be based on and limited by taxable values. Ib.

of said taxable values; bridge bonds shall be limited to an amount not exceeding one per cent of said taxable values. In determining the amount of the bonds of the respective kinds to be issued, previous indebtedness for said several purposes shall be considered. The total indebtedness of any county shall not be increased by any issue of bonds to a sum exceeding five per cent of its said taxable values.

Interest and sinking fund provided.
Ib.

Art. 881. The commissioners' court shall levy annual ad valorem taxes sufficient to pay the interest on said bonds and create a sinking fund for their redemption; which said taxes shall not exceed, for court house and jail bonds, one-fourth of one per cent; for bridge bonds, fifteen cents on each one hundred dollars.

Bonds to be signed, countersigned, registered and sold at not less than par, etc.
Ib.

Art. 882. The bonds shall be signed by the county judge and countersigned by the county clerk and registered by the county treasurer, before delivery. The county treasurer shall keep an account of the amount of principal and interest paid on each, and no bond shall be sold at less than its par value and accrued interest, exclusive of commissions.

Old bonds of legal issue may be substituted by new.
Ib.

Art. 883. When bonds have heretofore been legally issued for any of the purposes above named, new bonds in conformity with this law may be issued in lieu thereof.

[Note.—Articles 884 to 889 inclusive, not having been substituted, are dropped. See preceding note.]

Debts may be funded, when and how. (Acts of 1879, p. 61.)

Art. 890. All counties, incorporated cities and towns in this state owing debts are hereby authorized to fund the same in bonds of said counties, cities and towns, in such sums and at such rate of interest as may seem best to the authorities of said counties, cities and towns; provided, that in no case shall the rate of interest be greater than six per cent per annum; and provided further, that this and the two following articles shall not apply to any indebtedness of any counties, cities or towns made and undertaken since the eighteenth day of April, 1876, and shall not apply to any bonds issued under an act entitled, "An act to authorize counties, cities and towns to aid in the construction of railroads and other works of internal improvements," approved April 12, 1871; provided further, that no city shall issue bonds to a greater amount than is authorized by its charter, where a limit is placed on the issue of bonds in its charter.

Debts may be compromised.
Ib.

Art. 891. All the counties, incorporated cities and towns of this state, are hereby authorized to scale their debts of every description, bonded or otherwise, by adjustment and compromise with their creditors, and may issue bonds as provided for in the foregoing article, in any sums and at any rate of interest not greater than six per cent per annum, in settlement or compromise with said creditors, or with any one or more of them.

Sinking fund to be provided and tax levied.
Ib.

Art. 892. Said counties, cities and towns, in funding and scaling their said indebtedness made and undertaken before said eighteenth day of April, 1876, as herein provided, shall provide a suitable sinking fund of two per cent per annum, to be applied to the payment of the principal of the bonds issued under article 890; and shall annually levy and collect a sufficient tax on all the taxable property of said counties, cities and towns to pay the interest and sinking fund aforesaid; provided, that should there be annually collected more than is necessary to pay the interest already due and the two per cent sinking fund, such excess and sinking fund may be used in the purchase and cancellation of the bonds for which said sinking fund is set aside.

BONDED INDEBTEDNESS OF COUNTIES, CITIES AND TOWNS, COMPROMISED BY VOTE OF THE PEOPLE.

Art. 893. The county commissioners' court of any county, or the mayor and board of aldermen of any city or town in this state, are hereby authorized and empowered to compromise and fund any existing bonded indebtedness by such county, city or town issued, and the coupons due thereon, to aid in the construction of railroads or other works of internal improvement, or other bonds issued by authority of law; and for this purpose they are hereby authorized and empowered to issue new bonds in denomination of not less than fifty nor more than one hundred dollars, in their discretion, with interest coupons payable annually at the office of the state treasurer; said new bonds to become due and payable in twenty years, and to bear such rate of interest, not exceeding eight per cent per annum, as in their discretion may best subserve the purpose intended.

May compromise and fund indebtedness.
(Acts of April 18, 1879, p. 109.)

Art. 894. No compromises shall be made under the provisions hereof, by which any debt barred by the statute of limitation, or which may be barred at the time of such compromise, shall be revived, nor shall such new bonds, to be used in funding the principal of such old bonds, be issued for any greater amount than three-fourths of the principal of the old bonds outstanding; provided, that when the rate of interest of such new bonds is not more than five per cent per annum, then new bonds may be issued to the full amount of the old bonds outstanding; and provided further, that the amount of new bonds to be issued for the funding of the matured interest shall be left to the discretion of the county commissioners' court or the mayor and board of aldermen as the case may be, but in no case to exceed the amount of such matured interest.

Authority to compromise limited.
Ib.

Art. 895. The new bonds thus issued by any county shall be exempt from the payment of all county taxes, general and special, in the county by which they are issued; and the new bonds thus issued by any city or town shall be exempt from the payment of all taxes levied by such city or town.

Bonds exempt from taxation.
Ib.

Art. 896. The county commissioners' court or mayor and board of aldermen, as the case may be, shall cause to be prepared the necessary blank bonds to give effect to the provisions hereof, the cost of which shall be paid out of the treasury of such county, city or town; said bonds, when issued by any county, shall be signed by the county judge and attested by the county clerk of such county, with the seal of the county court affixed; and when issued by any city or town shall be signed by the mayor and attested by the recorder (or secretary if there be no recorder), with the seal of such city or town affixed; and such new bonds, whether issued by any county, city or town, shall be registered in the office of the state comptroller.

Issued and registered, how.
Ib.

Art. 897. Such new bonds may be exchanged for the old bonds at the rate specified in article 894, or they may be sold and the proceeds applied to the purchase of such old bonds at the rate specified in said article; provided, that no delivery of such new bonds shall take place unless a contract has already been entered into for the purchase of a corresponding amount of such old bonds; and provided further, no bonds so issued shall be sold at less than par; each bond sold shall be made to bear the lowest rate of interest that will give it par value.

May be exchanged or sold.
Ib.

Tax laws to be continued in force.
Ib.

Art. 898. All laws in force providing for the collection of taxes for the payment of the principal and interest of such existing bonds, shall apply and be in force for the collection of taxes for the payment of the principal and interest of such new bonds; provided, that the sinking fund may be used in the purchase and cancellation of such new bonds whenever the same can be bought at not more than their par value.

Same subject.
Ib.

Art. 899. The object and intention of these provisions being to enable the counties, cities or towns in this state which have granted subsidy bonds to railroads or other works of internal improvement, or created any bonded indebtedness whatever, to compromise the same and thereby reduce the burden of taxation, it is hereby declared, as an inducement to the holders of said bonds to accept the compromise, that whenever such compromise shall be entered into and accepted in good faith, either by the holder of the present bonds or by any person purchasing said new bonds as provided in the foregoing articles, that all laws in force or which may hereafter be in force for the assessment and collection of the state taxes, shall also be in force and apply to the assessment and collection of the taxes levied to meet the interest and sinking fund of said new bonds; and in any suits which may be instituted to enforce the payment of said new bonds or coupons against any such county, city or town, no defense either in law or equity shall be admitted in any of the courts of this state, except such as originated upon or subsequent to the issuance of such new bonds.

Collector liable for failing to collect tax, and when to be appointed by governor.
Ib.

Art. 900. Whenever a collector of taxes shall neglect or refuse to collect the taxes levied for the payment of the interest and sinking fund of such new bonds, he shall be liable on his official bond at the suit of any person or persons holding any of said bonds or coupons for all such damages as said person or persons shall have sustained by reason of his neglect or refusal; nor shall such collector or his sureties be relieved of such liability by his resignation of the office; and whenever any person who may be elected collector of taxes of any county, city or town shall fail, neglect or refuse to give the bond required by law for the collection of such tax, or whenever the commissioners' court or the mayor or board of aldermen, as the case may be, shall appoint any person who shall fail, neglect or refuse to give said bond, or whenever they shall fail, neglect or refuse to appoint some person who will give said bond and collect said tax, then it is hereby made the duty of the governor to appoint some suitable person to collect said taxes, who shall perform all the duties required herein or any other law of this state relating to the collection of said taxes from the time of his said appointment until the next general election.

Compromise by vote of the people; notice of election, how given.
Ib.

Art. 901. No compromise which may be agreed upon between the commissioners' court or the mayor and board of aldermen, as the case may be, and the bondholders or others, shall be binding upon the taxpayers of any county, city or town until the terms of said compromise shall have been submitted to a vote of the property taxpayers at an election held by order of the commissioners' court, or mayor and board of aldermen, as the case may be, and a majority of the said taxpayers shall vote in favor of and ratify the terms of said compromise; said election shall be held in accordance with the general law regulating elections; provided, that none but property taxpayers shall vote at any such election; provided further, that notice of such election shall be published for thirty days in some

newspaper published in the county, city or town, as the case may be; and in case there shall be no paper published in such county, city or town, then by posting in ten public places in such county, city or town, as the case may be, for thirty days prior to any election hereunder.

COUNTIES MAY COMPROMISE DEBTS AND ISSUE BONDS FOR SAME
CREATED PRIOR TO JANUARY 1, 1891.

Art. 902. The county commissioners' court of any county in this state is hereby authorized and empowered to compromise, compound, refund, settle with and to fund any existing indebtedness lawfully made and undertaken by such county by authority of law created prior to January 1, 1895, and for this purpose the said commissioners' courts are hereby authorized and empowered to issue bonds in denomination of not less than five hundred dollars, with interest coupons, payable annually; said bonds to become due and payable in twenty years from date of their issuance; provided, that said bonds may be paid off at any time after two years from their date of issuance if the commissioners' court should so elect; and provided further, that such bonds shall not be sold for less than their face or par value; said bonds to bear interest not exceeding six per cent per annum; and the said commissioners' courts are further authorized and empowered to levy a tax upon all real and personal property situated in the county, not to exceed twenty-five cents on the hundred dollars on the assessed value of such property in any one year, to pay the annual interest, and not less than two per cent annually of the principal of said bonds, besides the expenses of assessing and collecting the same, and no bonds shall be issued under this article until a levy as herein provided shall have been made, and when such levy shall have been made the same shall continue in force until the whole amount of the principal and interest shall have been fully paid; provided, that nothing herein shall be construed to authorize any county to levy any tax in excess of that authorized by the constitution and laws now in force; provided further, that it shall not authorize the taking up of bonds heretofore issued and issuing new bonds in lieu thereof unless such new bonds shall bear a less rate of interest than the bonds taken up.

Counties authorized to compromise, compound, settle and fund indebtedness. (Acts of 1895, p. 165.) (Amendment.)

Art. 903. All taxes levied hereunder shall be applied solely to the objects for which they were levied, as follows:

Taxes levied, how applied. (Acts of 1889, p. 89.)

1. To the payment of the expenses of assessing and collecting the same.

2. To the payment of the annual interest of said 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, after the expiration of said five years, as hereinbefore provided.

Art. 904. All taxes levied hereunder shall be assessed and collected in the same manner and by the same officers whose duty it is to assess and collect the state tax, and they shall receive for their services one-fourth the rate of commissions allowed for assessing and collecting the state tax. The same remedies shall be used to enforce the collection of said taxes that are provided by law to enforce the collection of the state tax; provided, that such taxes shall be assessed and collected separately from that levied, assessed and collected for current expenses of municipal government, and shall, when levied, specify in the act of levying the purpose therefor.

By whom assessed and collected. Ib.

Collector to give bonds.
Ib.

Art. 905. The officer whose duty it is to collect the taxes so levied shall give a bond, with two or more sufficient sureties, to be approved by the county commissioners' court, in a sum to be equal to double the estimated annual amount of said tax, which bond shall be payable to the county, and shall be conditioned for the faithful collection and payment of said tax into the county treasury.

Money received and paid out by treasurer.
Ib.

Art. 906. It shall be the duty of the county treasurer to receive all moneys collected as herein provided, and to keep separate accounts thereof, and to pay the same on warrants drawn by the order of the commissioners' court in the usual regular form.

Collector to pay money to treasurer.
Ib.

Art. 907. The collector of the taxes so levied shall pay over to the county treasurer, at the beginning of each and every month, all moneys he may have collected during the next preceding month, deducting his legal commission on the amount so paid, and he shall, at each regular meeting of the county commissioners' court, make a report of his collections and payments to the county treasurer since the next preceding term.

Bonds, how executed and expenses paid.
Ib.

Art. 908. All expenses necessary to give effect to the provisions herein shall be paid out of the treasury of the county, and all bonds issued by any county hereunder shall be signed by the county judge and attested by the clerk of the commissioners' court, with the seal of said court affixed thereto.

GENERAL POWER OF COUNTIES, CITIES AND TOWNS TO COMPROMISE RAILROAD AND OTHER INTERNAL IMPROVEMENT BONDS.

Internal improvement bonds, how adjusted and paid.
(Acts of 1887, p. 77.)
Ib.

Art. 909. Any county, city or town that has heretofore issued bonds to aid in the construction of railroads and other works of internal improvements, are hereby authorized to compromise or adjust such indebtedness so created, in such manner as may be deemed to the best interest of such county, city or town; provided, that the amount of the debt and the rate of interest thereon shall not be thereby increased; and provided further, that no debt which has become barred by the statute of limitation shall be thereby revived. For the purpose of carrying out the compromise or adjustment hereby authorized, the said counties, cities and towns are authorized to issue bonds, in denominations of not less than one hundred nor more than one thousand dollars each, for an amount sufficient to consummate such compromise or adjustment, not to exceed the amount unpaid on the outstanding bonds.

Bonds sold and exchanged, how.
Ib.

Art. 910. The bonds authorized by the preceding article may be exchanged for the bonds heretofore issued, or they may be sold and the proceeds used to buy up the old bonds as it may be necessary; provided, that the said bonds shall not be exchanged for the old bonds at a greater rate than par, except that the old bonds may be taken at a discount, and the new at the face value, according to agreement; and provided, that the new bonds issued hereunder shall not be sold for less than the amount for which the old bonds can be purchased. No such bonds shall be sold until there has been a contract by which the proceeds can be invested in the purchase of the old bonds.

Authority for executing bonds and terms and conditions of same.
Ib.

Art. 911. If any county, city or town shall desire to avail itself of these provisions, and when arrangements shall have been made for the compromise or adjustment of any of the bonds as hereinbefore mentioned, the commissioners' court of such county, or the city council of such town or city, shall enter an order, or adopt an ordinance,

as the case may be, authorizing the issuance of bonds, which shall prescribe the amount to be issued, and shall cause blank bonds to be prepared for the purpose aforesaid. The bonds shall be made payable to bearer, and shall be payable such time after date as may be fixed and agreed upon, not to exceed fifty years, and shall bear such rate of interest as may be agreed upon, which shall not exceed the rate of interest that the old bonds now bear. The interest may be made payable annually, or semi-annually, and at such place as may be specified. Coupons shall be attached, representing each installment of interest as specified, which shall also include two per cent of the face of the bond as a sinking fund. The bonds issued by the county shall be signed by the county judge and attested by the county clerk, with the seal of the county, and the coupons shall be signed by the county judge. The bonds that may be issued by any city or town under the provisions hereof, shall be signed by the mayor and attested by the city secretary or recorder, with the seal of such city or town attached, and the coupons shall be signed by the mayor.

Art. 912. The bonds as herein authorized to be issued may be exchanged or sold from time to time, and in such amounts as can be procured of the old bonds by purchase or exchange. Whenever any bonds shall be issued, the county commissioners' court, or council of such city or town, shall levy upon the last assessment of the property for such city or town, as the case may be, a tax sufficient to pay the interest and sinking fund of not less than two per cent upon such bonds. The tax so levied shall remain as the levy for that purpose until a new levy may be made for that purpose; provided, that such commissioners' court or council may from time to time increase or diminish such tax so as to adjust the same to the taxable values of the property of the county or city or town and the amount to be collected; provided further, that the amount shall not any time be reduced so that it will not raise an amount sufficient to pay the annual interest and sinking fund on all the bonds sold or exchanged under the provisions hereof.

Regulating taxes for interest and sinking fund. Ib.

Art. 913. If the tax collector, or any officer charged with the duty of collecting the tax levied to pay the interest and sinking fund upon said bond, shall refuse to collect the said tax at any time, he shall be liable upon his official bond to any person who may be injured thereby. If any collector shall refuse to collect said taxes, then upon the complaint of any citizen or person interested, or upon their own motion, it shall be the duty of the commissioners' court of such county, or the city council of such city or town, to appoint some suitable person, who shall qualify as required of the collector aforesaid, and shall proceed to collect said tax until the next general election, and until a collector shall be elected and qualified who will collect the same. If the commissioners' court or council aforesaid shall fail or refuse to appoint some person as aforesaid, then the governor of the state shall make such appointment of some suitable person who shall collect said taxes until the next general election and until some collector shall be elected who will collect the same; and such person so appointed by the governor shall qualify as the regular collector is or may be required by law.

Collector liable on bond for failure of duty; new collector appointed, when. Ib.

Art. 914. Before the bonds that may be issued hereunder shall be delivered they shall be registered in the office of the comptroller of the state, who shall indorse upon each bond the date of such registration; and when so registered and delivered the said bonds

Bonds to be registered in comptroller's office, how and effect of. Ib.

shall not be subject to any defense that existed prior to the delivery of them, and this shall be stated in the face of the bonds.

Assessment
of taxes and
compensa-
tion of asses-
sor.
Ib.

Art. 915. The taxes levied hereunder shall be assessed by the officer whose duty it is by law to make the assessment for such county, city or town, who shall receive for such assessment one per cent for making such assessment. The officer whose duty it is by law to collect the taxes for such county, city or town, shall collect the taxes levied hereunder, and shall receive as compensation therefor one per cent of the amount collected.

Surplus fund,
how applied.
Ib.

Art. 916. If after all the matured coupons upon any series of bonds that may be issued hereunder have been paid off there shall remain a surplus of the taxes so collected for the payment thereof, then the commissioners' court of such county, or the council of such city or town, may use the surplus so remaining to purchase any of the outstanding bonds, at not more than par. If said bonds can not be purchased at par, then the said surplus may be applied to the payment of the next maturing coupons upon their maturity, and the taxes for that year remitted to that extent.

PROVIDING FOR THE PAYMENT OF INTERNAL IMPROVEMENT BONDS.

Counties and
city authori-
ties may ad-
just tax to
conform to
interest and
sinking fund
for bonded in-
debtedness.
(Acts of 1887,
p. 29.)

Art. 917. The county commissioners' court of any county, or the mayor and board of aldermen or city council of any city or town, that have heretofore issued bonds to aid in the construction of railroads or other works of internal improvement, are hereby authorized and empowered to reduce the rate of taxation heretofore levied for the purpose of paying the interest and sinking fund on such bonds, so as to raise the amount necessary to pay the said interest and sinking fund which may become due annually according to the terms of the said bonds; and any county, city or town, by its said commissioners, or city council, or mayor and aldermen, may from time to time hereafter increase or diminish its rate of taxation according to the valuation of its taxable property, so as to raise the amount necessary for the payment of said interest and sinking fund annually; provided, that the taxes shall never be reduced below the rate that will raise the amount that is annually due upon such bonds.

How amount
of levy deter-
mined and
fees of
collector.
Ib.

Art. 918. The levy of tax provided for in the preceding article shall be made upon the assessed valuation of the property of such county, city or town for the previous year, and shall remain in force from year to year until there has been a new levy, according to the provisions hereof. It shall be the duty of the officer who shall make the assessments annually for such county, city or town to make the levy of the taxes aforesaid upon the assessment of property made for general purposes, and to so return his rolls as to show the said tax due from each person the same as the other taxes are shown. No additional fees shall be allowed for said work. For collecting the said taxes the tax collector of such county, city or town shall receive one and one-half per cent upon the amount collected.

REGULATING AND RESTRICTING THE ISSUANCE OF BONDS BY COUNTIES, CITIES AND TOWNS.

Annual tax to
meet interest
and sinking
fund.
(Acts 1895, p.
184.)

Article 918a. Hereafter any county, city, or town, acting through its commissioners' court, city council, or board of aldermen, as the case may be, in authorizing the execution of any bonds in pursuance of law, shall, at the time, provide for the levy and collection of a

tax annually of sufficient amount with which to pay the annual interest and a sinking fund with which to pay such bonded indebtedness at maturity.

Art. 918b. Hereafter no bonds executed by any county, city, or town shall bear a higher rate of interest than six per cent per annum, and shall not be sold at less than its par value and accumulated interest, exclusive of commissions.

Rate of interest; terms of sale.
Ib.

Art. 918c. Hereafter no county, city, or town shall execute a bond to mature later than forty years from the date of its execution.

No bond to run longer than forty years.
Ib.

Art. 918d. Any county, city, or town, in the state of Texas, desiring to issue bonds as authorized by the constitution and laws of this state, shall, before such bonds are offered for sale, forward to the attorney general the bonds to be issued, a certified copy of the order, or ordinance, levying the tax to pay interest and provide a sinking fund, with a statement of the total bonded indebtedness of such county, city, or town, including the series of bonds proposed, and the assessed value of property for purposes of taxation, as shown by the last official assessment, of such county, city or town, together with such other information as the attorney general may require; whereupon it shall be the duty of the attorney general to carefully examine said bonds in connection with the facts and the constitution and laws on the subject of the execution of such bonds, and if, as the result of such examination, the attorney general shall find that such bonds were issued in conformity with the constitution and laws, and that they are valid and binding obligations upon such county, city, or town by which they are executed, he shall so officially certify.

Conditions precedent to the issuance of bonds.
Ib.

Art. 918e. When said bonds have been examined by the attorney general and his certificate attached thereto, they shall be registered by the comptroller, in a book to be kept for that purpose, and the certificate of the attorney general to the validity of such bonds shall be preserved of record, for use in the event of litigation.

Bonds to be registered by comptroller.
Ib.

Art. 918f. Such bonds, after receiving the certificate of the attorney general, and having been registered in the comptroller's office, as provided herein, shall thereafter be held, in every action, suit, or proceeding in which their validity is or may be brought into question, prima facie valid and binding obligations. And in every action brought to enforce collection of such bonds, the certificate of the attorney general, or a duly certified copy thereof, shall be admitted and received in evidence of the validity of such bonds, together with the coupons thereto attached; provided, the only defense which can be offered against the validity of said bonds shall be for forgery or fraud. But this article shall not be construed to give validity to any such bonds as may be issued in excess of the limit fixed by the constitution, or contrary to its provisions, but all such bonds shall, to the extent of such excess, be held void.

Certificate of attorney-general and registration prima facie evidence of validity.
Ib.

Art. 918g. Nothing in this law shall be construed to apply to the issuance of any bonds in cases where provisions for their issuance have been made, in whole or in part, before the passage of this law.

Law not applicable in certain cases.
Ib.

TITLE XXVI.

County Treasurer.

Article	Article		
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Oath and bond of.....	920	Shall report to commissioners' court.....	928
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Vacancy, how filled.....	924	Shall perform such other duties as may be required by law.....	932
Appointee's oath, bond.....	925		
Shall receive moneys belonging to counties, etc.	926		

Election and term of office. (Const., art. 16, §44.) (Act Aug. 19, 1876, p. 199.)
 Oath and bond of. (Act May 13, 1846.)
 P. D. 1096.

Article 919. [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. 920. [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.

Shall give bond for school fund. (Act Aug. 19, 1876, p. 203, §23.)

Art. 921. [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.

Shall be required to give new bond, when.

Art. 922. [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.

Office to be declared vacant when

Art. 923. [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. 924. [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. 925. [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. 926. [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.)
P. D. 1097.

Art. 927. [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.

Shall keep true accounts and superintend collection of money, etc.
Ib.
P. D. 1098.

Art. 928. [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.
Ib.
P. D. 1099.

Art. 929. [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.
Ib.
P. D. 1100.

Art. 930. [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.
Ib.
P. D. 1101.

Art. 931. [999] It shall be the duty of the county treasurer to examine the accounts, dockets 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 dockets, accounts, etc.
Ib.
P. D. 1102.

Art. 932. [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 XXVII.

Courts—Supreme, and of Civil Appeals and Criminal Appeals.

CHAPTER ONE.

JUDGES OF THE SUPREME COURT.

	Article		Article
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Election and tenure of office.....	934	Vacancies, how filled.....	936

One chief and two associate justices. (Const., art. 5, §2.)

Article 933. [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.

Election and tenure of office. (Acts of 1892, p. 19.)

Art. 934. [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. The judges of said court now in office shall hold their office until the expiration of the term for which they were elected, and until their successors are elected and qualified. As soon as practicable after the election of the successors to the present incumbents, the newly elected judges shall cast lots for the term of office. That one who shall draw number one shall hold his office for two years; the one drawing number two shall hold his office for four years, and the one drawing number three shall hold his office for six years; each to hold his office until his successor is elected and qualified; and each justice of the supreme court elected thereafter shall hold his office for six years and until his successor is elected and qualified, and shall each receive an annual salary of four thousand dollars.

Qualification of judges. Ib.

Art. 935. [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.

Vacancies, how filled. Ib.

Art. 936. [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.

CHAPTER TWO.

TERMS OF THE SUPREME COURT.

	Article		Article
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Article 937. [1005] The supreme court shall hold one term each year at the city of Austin, commencing on the first Monday in October of each year, and may continue until the last Saturday in the next June. Terms of supreme court. (Acts of 1892, p. 19.)

Art. 938. [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 the 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.

Art. 939. The supreme court may appoint a bailiff to attend the sitting of the court, who shall receive an annual salary of three hundred dollars. Bailiff, appointment and compensation.

CHAPTER THREE.

JURISDICTION OF THE SUPREME COURT.

	Article		Article
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Court to make rules, etc.....	944		
May ascertain jurisdictional facts.....	945		

Article 940. [1011] The supreme court shall have appellate jurisdiction coextensive with the limits of the state, which shall extend to questions of law arising in all civil cases of which the courts of civil appeals have appellate but not final jurisdiction. Appellate jurisdiction of supreme court (Acts, of 1892, p. 19.)

Art. 941. [1011a] All causes shall be carried up to the supreme court by writs of error upon final judgment and not on judgments reversing and remanding causes except in the following cases, to-wit: Writs of error, in what cases. Ib; (Amend. 1895, p. 145.)

1. Where the state is a party or where the railroad commissioners are parties.
2. Cases which involve the construction and application of the constitution of the United States or of the state of Texas or of an act of congress.
3. Cases which involve the validity of a statute of the state.
4. Cases involving the title to a state office.

5. Cases in which a civil court of appeals overrules its own decisions or the decision of another court of civil appeals or of the supreme court.

6. Cases in which the judges of any court of civil appeals may disagree.

7. Cases in which any two of the courts of civil appeals may hold differently on the same question of law.

8. When the judgment of the court of civil appeals reversing a judgment practically settles the case, and this fact is shown in the petition for writ of error, and the attorneys for petitioners shall state that the decision of the court of civil appeals practically settles the case, in which case, if the supreme court affirms the decision of the court of civil appeals, it shall also render final judgment accordingly.

Petition for writ of error; requisites of and bond.
Ib: (Amend. 1895, p. 144.)

Art. 942. [1011b] Any party desiring to sue out a writ of error before the supreme court shall present his petition addressed to said court, stating the nature of his case and the grounds upon which the writ of error is prayed for, and showing that the supreme court has jurisdiction thereof; and the petition shall contain such other requisites as may be prescribed by the supreme court. The petition shall be filed with the clerk of the court of civil appeals within thirty days from the overruling of the motion for rehearing, and thereupon the said clerk of the court of civil appeals shall note upon his record the filing of said application, and shall forward to the clerk of the supreme court the said application, together with the original record in the case, and the opinions of the court of civil appeals, and the motion filed therein, and certified copies of the judgments and orders of the court of civil appeals; provided, that the party applying for the writ of error shall deposit with the clerk of the court of civil appeals a sum sufficient to pay the expressage or carriage of the said record to and from the clerk of the supreme court, which sum shall be charged as costs in the suit. If the writ of error be granted and the plaintiff in error has given no bond, then the supreme court in granting the writ shall specify what bond shall be given, and the plaintiff in error shall file said bond in the trial court, to be approved by the clerk of said court, and a certified copy thereof shall at once be transmitted to the supreme court, and upon the filing of said certified copy the clerk of the supreme court shall issue the citation in error as may be prescribed by the rules of the supreme court.

(Acts of 1892, p. 19.)

Art. 943. [1011c] If it shall appear to the supreme court, from an inspection of the petition and record, that there is error in said judgment of the courts of civil appeals, it shall grant a writ of error, returnable in thirty days, in such manner as may be prescribed by said court.

Court to make rules, etc.
Ib.

Art. 944. [1011d] The supreme court shall from time to time make and promulgate suitable forms, rules and regulations for carrying into effect the foregoing articles relating to the jurisdiction and practice of the supreme court.

May ascertain jurisdictional facts.
Ib.

Art. 945. [1011e] The supreme court shall have the power, upon affidavit or otherwise, as the court may determine, to ascertain such matters of fact as may be necessary to the proper exercise of its jurisdiction.

May issue writs.
Ib.

Art. 946. [1012] The supreme court, or any justice thereof, shall have power to issue writs of habeas corpus as may be prescribed by law; and the said court, or the justices thereof, may issue writs

of mandamus, procedendo, certiorari and all writs necessary to enforce the jurisdiction of said court; and in term time or vacation may issue writs of quo warranto or mandamus against any district judge or officer of the state government, except the governor of the state.

Art. 947. [1014] The supreme court shall have power to make, establish and enforce all necessary rules of practice and procedure, not inconsistent with the laws of this state, for the government of said court and all other courts of the state, so as to expedite the dispatch of business in said courts.

To prescribe rules of practice.
Ib.

Art. 948. [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 punish contempt.
(Act May 12, 1846.)
P. D. 1577.

Art. 949. [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.

May issue mandamus to compel district judge to proceed to trial.
P. D. 1579.

CHAPTER FOUR.

THE CLERK OF THE SUPREME COURT.

Article	Article
Appointment, qualification and bond..... 950	Shall record proceedings..... 955
Vacancy in vacation, how filled..... 951	Appointment of deputies..... 956
Term of office and salary..... 952	Clerk to be librarian..... 957
Seal of court, clerk to procure..... 953	His duties as such..... 958
Shall file and preserve transcripts, docket causes 954	

Article 950. [1017] There shall be appointed for the supreme court one clerk, 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 five 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 first recovery, but may be put in suit and prosecuted by any party injured until the amount thereof be recovered.

Appointment, qualification and bond.
(Acts of 1832, p. 19.)

Art. 951. [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

Vacancy in vacation, how filled.
(Act May 12, 1846.)
P. D. 1564.

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.

Term of office
and salary
ib.

Art. 952. [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 of 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 the law and the facts; and whenever the necessity occurs, the supreme court may appoint a clerk pro tempore. The clerk of the supreme court shall receive as compensation for his services a salary of twenty-five hundred dollars per annum, and he shall collect and pay into the treasury of the state all fees and costs to be collected by him over and above the salaries allowed him and his deputies, under such further rules and regulations as shall be prescribed by the comptroller, not in conflict with this chapter; such rules and regulations to be subject to the approval of the judges of the supreme court, to be entered of record in the minutes of said court. The supreme court shall also appoint a stenographer for said court at an annual salary of fifteen hundred dollars.

Seal of court,
clerk to procure.
(Act May 12,
1846.)
P. D. 1569.

Art. 953. [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.

Shall file and
preserve transcripts
and docket causes.
P. D. 1583.

Art. 954. [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 record
proceedings.
P. D. 1584.

Art. 955. [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.

Appoint-
ment of deputies.
(Acts of 1892,
p. 19.)

Art. 956. [1023] The clerk of the supreme court may appoint not more than two deputies at any time, whenever authorized to do so by a majority of the judges of the supreme court, which authority shall appear of record in the minutes of said court. Said deputies may discharge all the duties required by law of said clerk, and said deputies shall be required to give bond in the same manner and amount as the clerk of said court and to be approved by the judges of said court. Said deputies shall receive as compensation for their services such sum as shall be unanimously agreed on by the judges of the supreme court, this action to appear of record in the minutes of the court, not to exceed fifteen hundred dollars per annum, to be paid out of the fees collected by the clerk of said court; and the judges of the supreme court may dispense with the services of any or all of such deputies, or for any length of time whatever, as in their discretion they may deem to be to the public interest.

Clerk to be
librarian.
ib.

Art. 957. [1024] The clerk of the supreme court shall be librarian in charge of the library of said court.

Art. 958. [1025] It shall be the duty of such librarian 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 the court 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.

His duties as such.
Ib.

CHAPTER FIVE.

REPORTER TO THE SUPREME COURT.

	Article		Article
Appointment and removal of.....	959	Duties of printing board.....	963
Stationery, how furnished.....	960	Requisites of volume.....	964
Records and manuscripts; duties of reporters.....	961	Sale of reports.....	965
Courts to designate the cases to be reported.....	962	Reports, how printed.....	966

Article 959. The judges of the supreme court, after their election to each term of office, shall appoint some person or persons learned in the law, being a licensed attorney, to report the decisions of the supreme court, and of the courts of civil appeals, who shall be removable at the pleasure of the court, and who shall be paid for the services required three thousand dollars per annum, payable monthly on the certificate of the chief justice; provided, however, that he may be allowed such additional compensation for reporting the decisions of the courts of civil appeals as the supreme court may deem just.

Appointment and removal of reporters.
(Acts of 1882, p. 71.)

Art. 960. The reporter shall be furnished by the state printing board with the necessary stationery for the performance of the duties imposed by the provisions hereof.

Stationery, how furnished.
Ib.

Art. 961. The reporter shall obtain from the clerks of the courts the records of cases to be reported, with the briefs and opinions in such cases as soon as such cases are finally disposed of and the opinions are recorded, which shall be returned after the report thereof is completed. He shall without delay, under the direction of the court, prepare such decisions, with appropriate syllabus, and statements when necessary, for publication in book form, and shall from time to time deliver the same to the secretary of state for the board of public printing as hereinafter provided. The secretary of state shall receipt for the same and deliver to the expert printer appointed by the board of public printing for publication.

Records and manuscripts; duties of reporters.
Ib.

Art. 962. The supreme court shall designate by orders or otherwise the cases to be reported, and only such cases as are designated shall be reported and published, and only the main propositions made in the briefs and considered by the court in the opinion, with the authorities cited in support of such propositions shall be incorporated in the report.

Courts to designate the cases to be reported.
Ib.

Art. 963. As fast as the board of public printing shall receive through the secretary of state the manuscript copy of reported cases for the reporter, said board shall cause the same to be printed, with proper index, tables of cases cited, and of cases reported, at the printing office at the deaf and dumb asylum of Texas, and have one thousand copies bound of each volume of reports. The index, tables of cases cited, and of cases reported shall be prepared by the report-

Duties of printing board.
Ib.

er. The expert printer appointed by the printing board shall, after revising the printing, deliver a revise as the work progresses to the reporter, who shall correct and return to said expert.

Requisites
volume. of
Ib.

Art. 964. The decisions of said courts shall be printed and bound. Each volume shall not contain less than seven hundred pages nor more than eight hundred pages. Each page shall be twenty-six ems pica wide and forty-six ems pica long. The type used shall be long primer and minion of the same size used in volume 23, Wallace's United States supreme court reports. The lines shall be leaded with not thicker than eight to pica leads. The paper, presswork and binding shall be of the same style and at least equal quality in every respect with the volumes of Moore & Walker's reports heretofore published. The volumes containing the supreme court decisions shall be styled "The Texas Reports," and shall be so styled on the title page and back, and the volumes shall be numbered. The name of the reporter may be printed on the back of each volume. Each volume shall be copyrighted in the name of the reporter, who shall immediately on delivery of the edition transfer and assign the same to the state. It shall be electrotyped, and the plates shall be owned by the state and preserved by the secretary of state.

Sale of reports
by secretary of
state. Ib.

Art. 965. When printed and bound the reports shall be delivered to the secretary of state, who shall sell single copies for two dollars, exclusive of postage or express charges, and he shall also for the same price sell single copies of any former volume of reports for either of said courts heretofore published under the state's copyright and now owned by the state. The secretary of state shall deliver to the state treasurer the proceeds of all sales so made by him, of which and of his operations hereunder and of the transactions of the said board hereunder he shall make a full statement and showing in his biennial report.

Reports, how
printed. Ib.

Art. 966. Should the expert printer, whose duty it is to supervise and have promptly executed the printing, binding and delivering of the reports to the secretary of state, fail to have the work executed with promptness and in accordance with the provisions hereof, he shall be removed from his trust and another appointed; and whenever the board of public printing shall ascertain that the work of printing and binding the reports can be done more speedily, better and more economically by contract, or that ample material and means to carry out the provisions hereof are not at their control, they shall at once let the printing and binding of the reports out by contract, requiring security for the performance of the work and the delivery to the state of the electrotype plates. No copies of reports shall be furnished to any county except upon payment made by such county to the secretary of state as in sale to private parties. The secretary of state may transmit advance sheets of the reports as the publishing progresses on receiving two dollars for the volume, the purchaser to have the right on returning all the forms of the volume to the secretary of state to have the same bound without further expense on his paying the expense of transmitting the same to and from the state department.

CHAPTER SIX.

PROCEEDINGS IN CASES IN THE SUPREME COURT.
FILING AND DOCKETING CAUSES, ETC.

	Article		Article
Trial on questions of law only.....	967	Briefs filed.....	968

Article 967. [1033] In all cases of writs of error or certificates of error to the supreme court, the trial shall be only upon the question of law upon which the writ of error was allowed, or which was certified to the supreme court from a court of civil appeals; but the supreme court may require at any time the original transcript to be sent up.

Trial to be on questions of law only. (Acts of 1892, p. 19.)

Art. 968. [1039] When any cause or suit may be taken to the supreme court by writ of error, the briefs and arguments filed in the courts of civil appeals shall be submitted to the supreme court, and in addition thereto, the attorney for either party may file additional briefs, under such rules and regulations as may be prescribed by the supreme court.

Briefs filed. Ib.

CHAPTER SEVEN.

HEARING CAUSES.

	Article		Article
Disqualification of judges.....	969	No reversal or dismissal for want of form	972
Equal division of judges.....	970	Death of parties no abatement, when....	973
Order of trial of causes.....	971		

Article 969. [1040] No judge of the supreme court 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 the 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 cause or causes.

Disqualification of judges. (Const., art. 5, §11; act May 12, 1846.) P. D. 1575.

Art. 970. [1041] Whenever the supreme court 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.

Equal division of judges. P. D. 1576.

Art. 971. [1042] Causes on the docket of said court 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. 972. [1043] There shall be no reversal or dismissal for want of form; provided, that the requirements of the law and the rules of

No reversal or dismissal for want of form. (Acts of 1892, p. 19.)

the court be sufficiently complied with in presenting the case to enable the court to determine the same upon its merits. In each case the supreme court shall affirm the judgment, reverse and render the judgment which the courts of civil appeals ought to have rendered, or reverse the judgment and remand the case to the lower court, if it shall appear that the justice of the case demands another trial.

Death of parties no abatement, when.
Ib.

Art. 973. [1044] If any party to the record, in any cause now pending in or hereafter taken to the supreme court or court of civil 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 courts of civil 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 living, and such judgment shall have the same force and effect as if rendered in the lifetime of all the parties thereto.

CHAPTER EIGHT.

JUDGMENT OF THE COURT.

	Article		Article
Judgments in open court; opinions in writing	974	When judgments become final; issuance of mandate.....	976
Judgment against plaintiff in error and his sureties.....	975		

Judgments in open courts; opinions in writing.
(Act Nov. 10, 1866, p. 134.)
P. D. 6417.

Art. 974. [1047] In all cases decided by the supreme court 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.

Judgment against plaintiff in error and his sureties.
(Acts of 1892, p. 13.)

Art. 975. [1049] Whenever the supreme court on the trial of a cause brought from any court of civil appeals shall affirm the judgment or decree of such court, or when said court shall proceed to render such judgment or decree as should have been rendered by the courts of civil appeals, 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 plaintiff in error and his sureties on his bond, a copy of which shall always accompany the transcript of the record.

When judgments become final; issuance of mandate.
Ib.

Art. 976. [1050] The judgments of said court shall be final at the expiration of fifteen days from the rendition thereof, when no motion for rehearing has been filed; and upon the rendition of final judgment, the clerk of the supreme court, upon payment of costs, shall issue the mandate in the case. If for any cause the said court should set aside its judgment after the mandate has been issued, the clerk of the supreme court shall at once notify the party to whom the mandate was delivered, and the clerk of the court to which it was directed, to return it at once. All mandates from the said court shall issue to the court in which the original judgment was rendered.

CHAPTER NINE.

REHEARING.

	Article	Article	
Motion for, when and how made.....	977	Service on one of several parties.....	980
Notice of.....	978	When motion heard.....	981
Service and return of officer.....	979		

Article 977. [1051] Any party desiring a rehearing of any matter determined by said court 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. 6463q.

Art. 978. [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. 979. [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, 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. 6463p.

Art. 980. [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. 981. [1055] At any time, after five days from the return of such precept served, it shall be lawful for said supreme court 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, directed and executed	982	Clerk to issue mandate, when.....	984
Judgment enforced, how.....	983	Execution returnable, when.....	985
		Officer failing to make return.....	986

Article 982. [1056] All writs and process issuing from the supreme court 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 demand thereof, and returned to the court from which they emanated; and whenever such writs or process

Process, how tested, directed and executed.
(Acts of 1892, p. 19.)

shall not be executed, the clerk of the 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.

Judgment enforced, how.
Ib.

Art. 983. [1057] Upon the rendition by the supreme court of any such judgment or decree as is contemplated by article 975, 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 receipt of the mandate of the supreme court or court of civil appeals, shall proceed to issue execution thereon as in other cases.

Clerk to issue mandate, when.
Ib.

Art. 984. [1058] The clerk of the supreme court shall not deliver the mandate of the court until all costs of that court and of the courts of civil appeals have been paid. If the costs have not been paid at the end of fifteen days from the date of judgment or from the overruling of a motion for rehearing, the said clerk may issue an execution for the costs of the supreme court and the courts of civil appeals, specifying the amount of each, and attaching to said execution a correct list of all costs accruing in each of said courts. Said execution shall be directed to the sheriff or any constable of the county from which the cause was removed, or to any county in which the person or persons, liable under such execution, or either of them, may have property. It shall be the duty of every sheriff or constable receiving such execution to execute and return the same under the same rules, regulations and liabilities as provided for executions from the district court.

Execution returnable, when.
(Act March 9, 1875, p. 70, §2.)
Officer failing to make return.
Ib.

Art. 985. [1059] All executions for costs of the supreme court, as authorized by law, shall be returned by the sheriff or constable to whom they are directed, within four months from the date thereof.

Art. 986. [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 may issue citation returnable forthwith to such officer to appear before the said supreme court, 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 cost of such proceeding. It shall be the duty of the clerk of the supreme court, when he shall receive any money due the clerk of any court of civil appeals, to pay the same over to such clerk of the courts of civil appeals, and if he refuses to do so upon demand, the clerk of the said courts of civil appeals may file in the supreme court a motion against the said clerk so failing, and upon ten days' notice given to him the said supreme court may enter judgment against said clerk of the supreme court and the sureties on his official bond for double the amount of the costs so collected by him and due to said clerk of the courts of civil appeals.

CHAPTER ELEVEN.

JUDGES OF THE COURTS OF CIVIL APPEALS.

	Article		Article
Chief and associate justices.....	987	Qualification of judges.....	989
Election and term of office.....	988	Vacancies, how filled.....	990

Article 987. Each of the courts of civil appeals now or hereafter organized in this state shall consist of a chief justice and two associate justices, and the concurrence of two justices shall be necessary to the decision of a case.

One chief and two associate justices, (Acts of 1892, S. S., p. 25.)

Art. 988. The chief justice and associate justices of each of the courts of civil appeals shall be elected by the qualified voters of their respective districts, composed of the counties returnable to the several courts, at a general election. Upon their qualification, after the first election after the creation of any court of civil appeals in this state, the justices thereof shall draw lots for the terms of office, and those drawing number one shall hold their office for the term of two years; those drawing number two shall hold their offices for a term of four years, and those drawing number three shall hold their offices for the term of six years from the date of their election and until their successors are elected and qualified. Each of said offices shall be filled by election at the next general election at which terms as aforesaid would expire, and the person elected shall thereafter hold his office for six years and until his successor is elected and qualified, and shall receive each an annual salary of thirty-five hundred dollars, and no more.

Elected alternately, how; term of office. Ib.

Art. 989. No person shall be eligible to the office of chief justice or associate justice of the courts of civil appeals unless he be at the time of his election a citizen of the United States and of this state and a resident of the district for which he is elected, 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.

Qualification of judges. Ib.

Art. 990. In case of a vacancy in the office of chief justice or associate justice of any court of civil appeals 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 district composed of counties returnable to said court.

Vacancies, how filled. Ib.

CHAPTER TWELVE.

TERMS OF THE COURTS OF CIVIL APPEALS—SUPREME JUDICIAL DISTRICTS.

	Article		Article
Terms of court.....	991	Counties composing the supreme judicial districts	994
Districts as organized.....	992	Transfer of causes.....	994a
Places of holding court.....	993	Quorum and adjournment.....	995

Article 991. The terms of said courts shall commence on the first Monday in October of each year and may continue in session until the first Monday of July of each succeeding year.

Terms of court. Ib.

Art. 992. The state of Texas is hereby divided into five supreme judicial districts for the purpose of constituting and organizing courts of civil appeals therein respectively.

Districts as organized. Ib.; (amend., 1893, p. 171.)

Places of holding court.
Ib.

Art. 993. 1. One of the courts of civil appeals shall be held in the first supreme judicial district in the city of Galveston, in the county of Galveston.

2. One of the courts of civil appeals shall be held in the second supreme judicial district in the city of Fort Worth, in the county of Tarrant.

3. One of the courts of civil appeals shall be held in the third supreme judicial district in the city of Austin, in the county of Travis.

4. One of the courts of civil appeals shall be held in the fourth supreme judicial district in the city of San Antonio, in the county of Bexar.

5. One of the courts of civil appeals shall be held in the fifth supreme judicial district in the city of Dallas, in the county of Dallas.

Counties composing the supreme judicial districts.
Ib.

Art. 994. The following counties shall compose the first supreme judicial district: Newton, Jasper, Orange, Jefferson, Hardin, Tyler, Polk, Trinity, Houston, Madison, Walker, San Jacinto, Liberty, Chambers, Harris, Montgomery, Grimes, Washington, Waller, Fort Bend, Brazoria, Matagorda, Wharton, Colorado, Austin, Fayette, Lavaca, Jackson, Calhoun, Victoria, De Witt, Goliad, Refugio, San Patricio, Aransas, Nueces, Hidalgo, Cameron, Sabine, San Augustine, Nacogdoches, Angelina, Anderson, Freestone, Limestone, Brazos, Leon, Burleson, Galveston, Starr, Shelby, Cherokee, Rusk, Gregg, Smith and Panola.

2. The following counties shall compose the second judicial district: Greer, Ector, Midland, Glasscock, Dallam, Sherman, Hansford, Ochiltree, Lipscomb, Hartley, Moore, Hutchins, Roberts, Hemphill, Oldham, Potter, Carson, Gray, Wheeler, Deaf Smith, Randall, Armstrong, Donley, Collingsworth, Parmer, Castro, Swisher, Briscoe, Hall, Childress, Bailey, Lamb, Hale, Floyd, Loving, Winkler, Reeves, Ward, Motley, Cottle, Foard, Hardeman, Wilbarger, Wichita, Cooke, Montague, Clay, Archer, Baylor, Knox, King, Dickens, Crosby, Lubbock, Hockley, Crane, Upton, Cochran, Yoakum, Terry, Linn, Garza, Kent, Stonewall, Haskell, Throckmorton, Young, Jack, Wise, Denton, Tarrant, Parker, Palo Pinto, Stephens, Shackelford, Jones, Fisher, Scurry, Borden, Dawson, Gaines, Andrews, Martin, Howard, Mitchell, Nolan, Taylor, Callahan, Bosque, Eastland, Erath, Hood, Somervell and Comanche.

3. The following counties shall compose the third supreme judicial district: Sterling, Coke, Runnels, Coleman, Brown, Mills, Hamilton, Robertson, Coryell, Bell, Lampasas, San Saba, McCulloch, Concho, Tom Green, Irion, Llano, Burnet, Williamson, Milam, Lee, Bastrop, Travis, Blanco, Hays, Comal, Caldwell, McLennan and Falls.

4. The following counties shall compose the fourth supreme judicial district: El Paso, Jeff Davis, Presidio, Brewster, Buechel, Pecos, Crockett, Val Verde, Schleicher, Sutton, Edwards, Kinney, Maverick, Menard, Kimble, Kerr, Bandera, Uvalde, Zavala, Dimmit, Webb, Encinal, La Salle, Frio, Medina, Duval, McMullen, Atascosa, Bexar, Kendall, Gillespie, Mason, Guadalupe, Wilson, Live Oak, Zapata, Bee, Gonzales and Karnes.

5. The following counties shall compose the fifth supreme judicial district: Grayson, Collin, Dallas, Rockwall, Ellis, Navarro, Kaufman, Henderson, Van Zandt, Rains, Hunt, Fannin, Lamar, Hopkins, Delta, Wood, Red River, Titus, Franklin, Camp, Upshur, Harrison, Marion, Cass, Morris, Bowie, Johnson and Hill.

Art. 994a. It shall be the duty of the supreme court to equalize as nearly as practicable the amount of business upon the dockets of the different courts of civil appeals by directing the transfer of cases from such of said courts as may have the greater number of cases upon their dockets to those having a less amount of business upon their dockets; such transfers to be made as soon as practicable after the passage of this article, and thereafter at least once a year, in such manner and under such rules and regulations as the supreme court shall provide. And the said courts of civil appeals to which such cases shall be transferred shall have jurisdiction of all such cases transferred without regard to the districts in which such cases were originally tried and returnable on appeal; provided, that cases transferred from any court of civil appeals shall be taken by consecutive numbers in the order in which they stand upon the docket.

Transfer of causes. (Acts of 1895, p. 79.)

Art. 995. A majority of the judges of the several courts of civil appeals shall constitute a quorum for the transaction of business. The said courts may adjourn from day to day or for such time as may be deemed proper by the judges thereof. But if a sufficient number of the judges shall not be present at the first or any day of the term, any judge of the court or the sheriff attending the same may adjourn the court from time to time until a quorum shall be in attendance, but the court shall not be finally adjourned for the term.

Quorum, what, and court adjourned, when. Ib.

CHAPTER THIRTEEN.

JURISDICTION OF THE COURTS OF CIVIL APPEALS.

	Article		Article
Jurisdiction defined.....	996	May punish for contempt.....	999
Issue writs of mandamus, etc.....	997	May mandamus district courts.....	1000
Inquire into facts of jurisdiction.....	998		

Article 996. The appellate jurisdiction of the courts of civil appeals shall extend to civil cases within the limits of their respective districts—

Jurisdiction defined. Ib.

1. Of which the district courts have original or appellate jurisdiction.
2. Of which the county court has original jurisdiction.
3. Of which the county court has appellate jurisdiction when the judgment or amount in controversy or the judgment rendered shall exceed one hundred dollars, exclusive of interest and costs. The judgment of the courts of civil appeals shall be conclusive in all cases on the facts of the case, and a judgment of such courts shall be conclusive on the law and fact, nor shall a writ of error be allowed thereto from the supreme court in the following cases, to-wit:
 1. Any civil case appealed from a county court or from a district court when under the constitution a county court would have had original or appellate jurisdiction to try it, except in probate matters and in cases involving the revenue laws of the state or the validity of a statute.
 2. All cases of boundary.
 3. All cases of slander and divorce.
 4. All cases of contested elections of every character other than for state officers, except where the validity of the statute is attacked by the decision.

5. The judgments of said courts of civil appeals shall be final in all appeals from interlocutory orders appointing receivers or trustees or such other interlocutory appeals as may be allowed by law, and the judgment of said court shall be final in all other cases as to law and facts except where appellate jurisdiction is given to the supreme court and not made final in said courts of civil appeals.

May issue writs of mandamus, etc.
Ib.

Art. 997. The said courts and the judges thereof shall have power to issue writs of mandamus and all other writs necessary to enforce the jurisdiction of said courts.

May inquire into facts touching jurisdiction.
Ib.

Art. 998. The said courts shall have power, upon affidavit or otherwise as by the courts may be thought proper, to ascertain such matters of fact as may be necessary to the proper exercise of their jurisdiction.

May punish for contempt.
Ib.

Art. 999. The said courts 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 or imprisonment not exceeding twenty days.

May mandamus district courts.
Ib.

Art. 1000. The said courts, 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 on or before the first day of the next 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 FOURTEEN.

CLERKS OF THE COURTS OF CIVIL APPEALS.

Article	Article
Clerk; appointment, qualification and bond.....1001	Deputy clerks.....1007
Appointment to fill vacancy.....1002	Shall be librarian, except, etc.....1008
Term of office and how removed.....1003	Library regulations.....1009
Seal of court.....1004	Semi-annual report of costs collected.....1010
Duties as to records, transcripts, dockets, etc.....1005	Compensation of clerk.....1011
To record judgments, etc.; certify decisions to lower court.....1006	Stenographer.
	Court stenographer, and salary.....1012

The clerk, his appointment, qualification and bond.
Ib.

Article 1001. There shall be appointed for each of the courts of civil appeals one clerk, 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 any judge thereof, payable to the governor and his successors in office, in the sum of five thousand dollars, conditioned for the faithful performance of the duties of his office, and that he will correctly record the judgments, decrees, decisions and orders of said courts, 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 is recovered.

Art. 1002. If, in vacation, the office of clerk may become vacant, the appointment shall be made by the chief justice and the associates of said courts, or by 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 the 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, and until a regular appointment shall be made.

Temporary appointment to fill vacancy, how and when made.
Ib.

Art. 1003. The clerk of each of said courts shall hold his office for a term of two years from his appointment, but may be removed therefrom for neglect of duty or misconduct in office, by the courts of civil appeals, 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 court may appoint a clerk pro tempore.

Term of office, and how removed.
Ib.

Art. 1004. It shall be the duty of the clerk of each court of civil appeals to procure a seal for the use of the court, which shall have a star of five points, with the words: "Court of Civil Appeals of the State of Texas" engraved thereon.

Seal of court.
Ib.

Art. 1005. The clerks of said courts 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 they are filed.

Duties as to records, transcripts, dockets, etc.
Ib.

Art. 1006. The said clerk shall faithfully record the proceedings and decisions of said courts, and certify their judgments to the court from which the causes were brought.

To record judgments, etc., and to certify decisions to lower court.
Ib.

Art. 1007. The clerk of each court may appoint deputies, who, in the name of said clerk, may discharge all the duties required by law of said clerk, and said deputies may be required to give bonds, with sureties, to said clerk, for the faithful discharge of their duties, which deputies shall be paid out of the fees collected by the clerk, not to exceed twelve hundred dollars per annum to each deputy.

Deputy clerks, appointment of, and fees.
Ib.

Art. 1008. The clerk of each of said courts shall be librarian in charge of the libraries of said court, except the library at Austin, which shall be under the control of the supreme court.

Shall be librarian, except, etc.
Ib.

Art. 1009. It shall be the duty of such librarian to take charge of and keep together in good order and make catalogues of the books of such library, which shall be open to the public use, under such rules as may be prescribed by the courts for the safe keeping thereof; provided, the books shall not be removed from the library room, except by the judges of the courts.

Library regulations.
Ib.

Art. 1010. The clerks of each of the courts of civil appeals shall, within ten days after the first day of January and July, make a report under oath to said courts showing the amount of costs collected by him during the preceding six months, and also the cases in which the same was collected, and the disposition made of such

Semi-annual report of costs collected.
Ib.

cause. Such report shall be filed and recorded in the minutes of the court.

Compensation of clerks. *Ib.*; (amend., 1893, p. 165.)

Art. 1011. The clerks of the courts of civil appeals shall receive as compensation for their services the following fees:

Entering appearances of either party, in person or by attorney, to be charged but once.....	\$0 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 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 a 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 court to any inferior court.....	1 50
Making copies of any papers or records in their offices, including certificate and seal, for each 100 words.....	10
Recording the opinions of the judges, for each 100 words....	15
Taxing the bill of costs in each case.....	50
Filing each brief, or other paper necessary to be filed.....	10
For certificate and seal, where same is necessary.....	50
Recording sheriff's return on execution.....	50
For issuing copies of each notice ordered by court.....	50

STENOGRAPHER.

Court stenographer and salary. *Ib.*

Art. 1012. Each court of civil appeals shall appoint one stenographer, who shall discharge such duties as may be required by the court; shall be duly sworn to keep secret all matters which may come to his knowledge as said stenographer; shall receive a salary of twelve hundred dollars per annum, and shall each give bond, with two or more sureties, in the sum of five thousand dollars, payable to the state of Texas, conditioned for the faithful performance of the duties of said office.

CHAPTER FIFTEEN.

REPORTER TO THE COURTS OF CIVIL APPEALS.

The reporter of the supreme court shall be..... Article 1013

The reporter of the supreme court shall be. *Ib.*

Article 1013. The reporter to the supreme court shall also be reporter to the courts of civil appeals, and the decisions of said courts of civil appeals shall be published and sold by the state in the same manner as is now provided by law for the publication and sale of the supreme court decisions.

CHAPTER SIXTEEN.

PROCEEDINGS IN CASES IN THE COURTS OF CIVIL APPEALS.

Cases, how brought before the courts for trial1014 Transcript filed, when.....1015 Certificate of affirmance, proceedings.. 1016	Article Article	Transcript filed, and cause heard after affirmance of certificate, when.....1017 Assignment of error, requisite of.....1018 Appearance by brief, etc.....1019 Notices to attorneys, how given.....1020
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Article 1014. In all cases of appeal or writ of error to the courts of civil appeals the trial shall be on a statement of facts or agreed statement of the pleadings and proof as agreed upon by the parties or their attorneys, or the conclusions of law and fact, as the case may be, 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 exceptions not signed by the judge trying the cause below, upon its 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 case, such copies to be contained in and to form a part of the record transmitted to the court of civil appeals.

Case, how brought before the court for trial.
 Ib.

Art. 1015. In any appeal or writ of error as provided for in this chapter, the appellant or plaintiff in error shall file the transcript with the clerk of the courts of civil appeals within ninety days from the performance of the appeal or service of the writ of error; provided, that for good cause the court may permit the transcript to be thereafter filed upon such terms as it may prescribe.

Transcript filed, when.

Art. 1016. In case the appellant or plaintiff in error shall fail to file a transcript of the record, as directed in this chapter, then it shall be lawful for the appellee or defendant in error to file with the clerk of said court 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 courts of civil appeals to affirm the judgment of the court below, unless good cause can be shown why such transcript was not filed by the appellant or plaintiff in error. If a copy of the bond accompanies such certificate of the clerk of the district or county court, the judgment shall in like manner be affirmed against the sureties on such bond.

Certificate of affirmance, and proceedings thereon.
 Ib.

Art. 1017. In all cases where the courts of civil appeals shall have affirmed the judgment of the court below, under the provisions of the preceding article, said court may, at any time within fifteen days after such affirmance, permit the transcript to be filed by the

Transcript filed and cause heard after affirmance on certificate, when.
 Ib.

appellant or plaintiff in error, and the case to be tried on its merits; provided, that 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 1015, and shall also show to said court that he has given the appellee or defendant in error notice of his intentions to apply for such permission to file said transcript, and in cases where the court shall adjourn within fifteen 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 at such time as may be deemed proper, 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 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 error; requisite of. *Ib.*

Art. 1018. The appellant or plaintiff in error shall in all cases file with the clerk of the court below all assignments of error, distinctly specifying the grounds on which he relies, before he takes the transcript of the record from the clerk's office; all errors not distinctly specified are waived.

Appearance by brief, etc. *Ib.*

Art. 1019. When any cause or suit may be taken up from any inferior court to the courts of civil appeals, whether by appeal, writ of error or otherwise, it shall be lawful for the attorney both for the plaintiff and defendant to file in the papers of said suit or cause his written brief or argument; and the said court shall be required to notice the same as if it were the personal appearance of said 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.

Notices to attorneys, how given. *Ib.*

Art. 1020. All notices required herein to be given by the court of civil appeals to the parties or their attorneys of record in any case shall be served by the clerk of said court, transmitting said notice to said attorneys by registered letter through the mail properly directed. Registration receipts shall be filed and kept by the clerk with the record of the cause.

CHAPTER SEVENTEEN.

HEARING CAUSES.

	Article		Article
Disqualification of judge.....	1021	No reversal for want of form; affirmance with damages; error cured, how.....	1024
Docket of causes; disposition of same.....	1022	New appeal bond allowed, when.....	1025
Order of decision, etc.....	1023	Death does not abate, when.....	1026

Disqualification of judges. *Ib.*

Article 1021. No judge of the courts of civil 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 where the court or any two of its members shall thus be disqualified to hear and determine any cause or causes in said courts that fact 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 cause or causes.

Art. 1022. When a cause is carried to the courts of civil appeals by writ of error, it shall be docketed in the order of the date received, and the clerk shall transfer the said cause to the trial docket thirty days after the same has been received and docketed; provided, that the court may upon motion of either party, of which notice shall be given to the adverse party, extend the time for placing said cause on the trial docket for good cause shown. Causes on the trial docket of said court shall be heard in the order of the date of filing, except as hereinafter provided, unless continued to some future time for good cause shown, and it shall be the duty of the clerk, under the directions of the court, to notify the parties or the attorneys of record, of the date when the cause is set for hearing.

Docket of causes and disposition of same.
Ib.

Art. 1023. The cases filed in the courts of civil appeals shall be decided in the order in which they are filed at each term of the court, but the following cases shall have precedence of all others in the order named:

Cases decided in their order, except, etc., and disposed of, how.
Ib.

1. All cases in which the railway commission is a party.
2. Cases in which the state is a party.
3. Cases which shall be submitted on oral argument for all parties to the cause.
4. Such other cases as the court by order or rule may direct.

On the call of cases the court shall set down the causes for argument for such time as the same can be heard, and notice of which shall be given to counsel as heretofore provided; and said cause shall be determined upon argument or as soon thereafter as practicable, or it shall be set down for further argument, but may be postponed by order of the court to a later day in the term.

Art. 1024. There shall be no reversal on 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 cost 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 courts of civil appeals, it shall be lawful for the party in whose favor such excess of damages has been rendered to make such release in the courts of civil 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 the said court, after revising said judgment, said courts of civil appeals shall proceed to give such judgment as the court below ought to have given if the release had been filed therein.

No reversals for want of form; affirmance with damages, when; error cured by release of damages, how.
Ib.

Art. 1025. When there is a defect of substance or form in any appeal or writ of error bond, on motion to dismiss the same for such defect the court may allow the same to be amended by filing in the said courts of civil appeals a new bond, on such terms as the court may prescribe.

New appeal bond allowed when.
Ib.

Art. 1026. If any party to the record in any cause hereafter taken to the courts of civil appeals, by appeal or writ of error, or transferred from the supreme court or courts of appeals, shall have died heretofore, or shall hereafter die, after the appeal bond has been filed

Death does not abate, when.
Ib.

and approved, or after the writ of error has been served, and before such cause has been decided, such cause shall not abate by such death, but the court shall proceed to adjudicate such cause and render judgment therein as if all parties thereto were still living, and such judgment shall have the same force and effect as if rendered in the lifetime of all the parties thereto.

CHAPTER EIGHTEEN.

JUDGMENT OF THE COURT.

	Article		Article
Judgment, when reformed and when re-		Mandate and execution issued, when...	1029
manded	1027	Suggestion of remittitur.....	1029a
Disposition of case when judgment af-		Refusal of remittitur not subject to	
firmmed	1028	comment on subsequent trial.....	1029b

Judgment, when reformed; when remanded. *Ib.*

Article 1027. When the judgment or decree of the court below shall be reversed, the court 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 damage 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.

Disposition of case, when judgment affirmed. *Ib.*

Art. 1028. Whenever the courts of civil appeals on the trial of cases brought from an inferior court shall affirm the judgment or decree of such inferior court, or when said courts 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 courts 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 courts of civil appeals shall in their discretion 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 courts rendered as contemplated in this article shall be final.

Mandate and execution, issued when. *Ib.*

Art. 1029. If no writ of error be sued out or motion for rehearing be filed within thirty days after the conclusion or decision of the court has been entered in any court of civil appeals, the clerk of the court shall, upon application of either party and the payment of all costs, issue a mandate upon said judgment; and in any cause reversed by said courts the appellant shall be entitled to an execution against the appellee for costs occasioned by such appeal, including costs for the transcript, said costs to be taxed by the clerk of the said court.

Suggestion of remittitur. (Acts 1893, p. 89.)

Art. 1029a. In all civil cases, now pending, or that may hereafter be appealed to any court of civil appeals of this state, and such court shall be of the opinion that the verdict and judgment of the trial court is excessive, and for that reason only said cause should be reversed, then it shall be the duty of such court of civil appeals to indicate to the party in whose favor such judgment was rendered, or his attorneys of record, the amount of the excess of such verdict and judgment, and said court shall, at the same time, indicate to such party, or his attorney, within what time he may file a remittitur of such excess, and if such remittitur shall be so filed, then the court

shall reform and affirm such judgment in accordance therewith; if not filed as indicated, then to be reversed.

Art. 1029b. Whenever any court of civil appeals shall indicate that a verdict is excessive, as hereinbefore provided, and no remittitur shall be filed, as herein provided, no evidence shall be allowed nor allusion made, in any subsequent trial, of the action of such court of civil appeals in reference to the amount of excess of such verdict.

Refusal to re-
mit not sub-
ject to com-
ment on sub-
sequent trial.
Ib.

CHAPTER NINETEEN.

REHEARING.

	Article		Article
Motion for rehearing, requisites and no- tice of.....	1030	Service of notice and return.....	1032
Notice, how given.....	1031	When motion determined.....	1023

Article 1030. 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 courts, or the filing of the findings of fact and conclusions of law, file with the clerk of said courts his motion in writing for a rehearing thereof, in which motion the ground 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 than fifteen days after the rendition of the judgment the motion may be made at such time and in such manner as may be prescribed by rules to be made by the supreme court.

Motion for re-
hearing; re-
quisites and
notice of.
Ib.

Art. 1031. Upon the filing of such motion with the clerk of said courts, he shall make a certified copy thereof 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, how
given.
Ib.

Art. 1032. 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 in what manner he executed the same or that the party named in the precept is not to be found in his county, as the case may be.

Service of
notice and
return.
Ib.

Art. 1033. At any time, after five days from the return of such precept served, it shall be lawful for said courts to hear and determine motion for rehearing, and not sooner.

When motion
determined.
Ib.

CHAPTER TWENTY.

EXECUTION OF JUDGMENT.

	Article		Article
Writ, how tested, directed, etc.....	1034	Return of execution, when.....	1037
Lower court to enforce judgment, how and when.....	1035	Proceedings for neglect of duty against officer	1038
No mandate to issue until costs paid.....	1036		

Writ, how tested, directed, executed and returned; and alias issues, when.
Ib.

Article 1034. All writs and process issuing from the courts of civil appeals shall bear the test of the chief justice or presiding judge of said court, under the seal of said court and signed by the clerk thereof, and shall 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.

Lower court to enforce judgment, how and when.
Ib.

Art. 1035. Upon the rendition by the courts of civil appeals of any such judgment or decree as is contemplated by article 1028, 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 receipt of the mandate of the supreme court or courts of civil appeals, shall proceed to issue execution thereon as in other cases.

No mandate to issue until costs paid.
Ib.

Art. 1036. On the rendition of any final judgment or decree by the courts of civil appeals the clerk of said court shall not issue and deliver the mandate of the court or certify the proceedings of the lower court until all of the costs accruing in the cause in the courts of civil appeals have been paid. If neither party shall pay the costs and take out the mandate within thirty days after the time when the same can be issued by law, then it shall be the duty of the clerk to issue execution for the costs accruing in his court against the party against whom such costs have been adjudged, and to send such execution by mail to the proper officer for collection; but he shall retain the mandate until the costs have been paid or collected.

Return of execution, when.
Ib.

Art. 1037. All executions for costs of the courts of civil 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.

Proceedings for neglect of duty against officer.
Ib.

Art. 1038. 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 court may issue citation returnable forthwith to such officer to appear before said court and show cause, if any he can, why he has not collected and returned said 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 proceedings.

CHAPTER TWENTY-ONE.

PROCEEDINGS ON APPEAL TO SUPREME COURT.

Conclusions to be filed, etc.....1039 Dissenting opinion, grounds for appeal.....1040 Proceedings on certificate of dissent filed.....1041	Article Article	Decision by; judgment of.....1042 Decision of invoked when.....1043	Article Article
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Article 1039. After a cause is decided in the courts of civil appeals a conclusion of the facts and law of the case shall be filed in said cause within thirty days after the decision of the same; provided, it shall not be necessary to file said conclusion in causes in which no writ of error will lie to the supreme court, but where a cause is reversed, and then the court shall file the reasons for reversing the same.

Art. 1040. When any one of said courts of civil appeals shall in any cause or proceeding render a decision in which any one of the judges therein sitting shall dissent as to any conclusions of law material to the decision of the case said judge shall enter the grounds of his dissent of record, and the said court of civil appeals shall, upon motion of the party to the cause, or on its own motion, certify the point or points of dissent to the supreme court.

Art. 1041. When a certificate of dissent is sent up by any court of civil appeals it shall be the duty of the clerk to send up a certified copy of the conclusions of fact and law as found by the court, and the questions of law upon which there is a division, and the original transcript, if so ordered by the supreme court, and thereupon, if the supreme court so direct, the clerk shall set down the same for argument and notify the attorneys of record.

Art. 1042. After the question is decided the supreme court shall immediately notify the court of civil appeals of their decision, and the same shall be entered as the judgment of said court of civil appeals.

Art. 1043. Whenever in any case pending before the court of civil appeals there should arise an issue of law which said court should deem it advisable to present to the supreme court for adjudication, it shall be the duty of the presiding judge of said court to certify the very question to be decided by the supreme court, and during the pendency of the decision by the supreme court the cause in which the issue is raised shall be retained for final adjudication in accordance with the decision of the supreme court upon the issue submitted.

CHAPTER TWENTY-TWO.

JUDGES OF THE COURT OF CRIMINAL APPEALS.

Judges, qualification, compensation and quorum1044 Election and term of office.....1045 Presiding judge chosen and writs, etc., how tested.....1046	Article Article	Proceedings on disqualification of.....1047 Vacancies, how filled.....1048 Terms of office—long and short terms at first election.....1049	Article Article
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Article 1044. The court of criminal 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

Number of judges, qualification, compensation, and what constitutes a quorum.
 (Acts of 1892, S. S., p. 34.)

court; said judges shall have the same qualifications and receive the same salaries as judges of the supreme court.

Election and term of office. Ib.

Art. 1045. The judges of said court shall be elected by the qualified voters of the state at a general election, and shall hold their offices for a term of six years.

Presiding judge chosen and writs, etc., how tested. Ib.

Art. 1046. The judges of said court shall choose a presiding judge for said court from their number at such times as they shall 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.

Proceedings on disqualification of judge. Ib.

Art. 1047. When said court, or any member thereof, shall be disqualified under the constitution and laws of this state to hear and determine any case or cases in said court, the same shall be certified to the governor of the state, who shall immediately commission the requisite number of persons learned in the law for the trial and determination of such cause or causes.

Vacancies, how filled. Ib.

Art. 1048. In case of a vacancy in the office of a judge of said court the governor shall fill the vacancy by appointment for the unexpired term. The judges of the court of appeals who may be in office at the time when this law takes effect shall continue in office as judges of the said court of criminal appeals until the expiration of their term of office.

Terms of office, long and short terms at first election. Ib.

Art. 1049. At the first session of said court, after the first election of judges thereof under this law, the terms of office of the said judges shall be divided into three classes, and the judges thereof shall draw for the different classes. The judge who shall draw class number one shall hold his office two years from the date of his election and until the election and qualification of his successor; the judge drawing class number two shall hold his office for four years from the date of his election and until the election and qualification of his successor; and the judge who may draw class number three shall hold his office for six years from the date of his election and until the election and qualification of his successor; and thereafter each of the judges of said court shall hold his office for six years, as provided in the constitution of this state.

CHAPTER TWENTY-THREE.

TERMS OF THE COURT OF CRIMINAL APPEALS.

	Article	Article
Terms of court, when and where.....	1050	Counties, where returned.....1051

Terms of court, when and where held. Ib.

Article 1050. Said court shall hold its terms as follows: A term of court shall be held in the city of Tyler, in Smith county, which shall begin on the first Monday in October each year, and may continue until the last day in December thereafter, unless the business before it is sooner disposed of.

A term of said court shall be held in the city of Dallas, in Dallas county, which shall begin on the first Monday in January in 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 in the city of Austin, in Travis county, which shall begin on the first Monday in April in each year, and may continue until the last day in June thereafter, unless the business before it is sooner disposed of.

Art. 1051. Appeals from the several counties shall be return-
 able to such terms of said court as shall be determined by said
 court under the rules thereof; provided, that appeals from the sev-
 eral counties in the supreme judicial district in which Austin is sit-
 uated shall be returnable to the term of the court of criminal ap-
 peals held in said city.

Counties,
 where re-
 turned.
 Ib.

CHAPTER TWENTY-FOUR.

JURISDICTION OF THE COURT OF CRIMINAL APPEALS.

Jurisdiction of the court.....	Article 1052	Jurisdictional facts may be ascertained.	Article 1054
Writs of habeas corpus, etc.....	1053		

Article 1052. Said court shall have appellate jurisdiction co-
 extensive with the limits of the state in all criminal cases of what-
 ever grade, with such exceptions and under such regulations as may
 be prescribed by law.

Jurisdiction of
 the court.
 Ib.

Art. 1053. Said court and the judges thereof shall have the
 power to issue the writ of habeas corpus, and, under such regula-
 tions as may be prescribed by law, issue such writs as may be
 necessary to enforce its own jurisdiction.

Writs of
 habeas corpus,
 etc., power to
 issue.
 Ib.

Art. 1054. Said court shall have power, upon affidavit or other-
 wise, to ascertain such matters of fact as may be necessary to the
 exercise of its jurisdiction.

Jurisdiction-
 al facts may
 be ascer-
 tained.
 Ib.

CHAPTER TWENTY-FIVE.

CLERKS OF THE COURT OF CRIMINAL APPEALS.

Terms of office.....	Article 1055	Deputies, appointed by and responsible to	Article 1058	
Shall qualify and give bond.....	1056		Seal of court.....	1059
Duties and liabilities.....	1057			

Article 1055. Said court 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 of record in the
 minutes of said court.

Terms of
 office.
 Ib.

Art. 1056. 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 criminal appeals, as is now or may hereafter be required of
 clerks of the supreme court.

Shall qualify
 and give bond.
 Ib.

Art. 1057. Said clerks shall perform as clerks of the court of
 criminal appeals the like duties as are now or may hereafter be re-
 quired by law of the clerks of the supreme court, and shall be sub-
 ject to the same liabilities as are now or may hereafter be prescribed
 for the clerks of the supreme court.

Duties and
 liabilities.
 Ib.

Art. 1058. Said clerks may appoint deputies, who shall perform
 all the duties of said clerks and who shall be responsible to said
 clerks for the faithful discharge of the duties of their office.

Deputies, how
 appointed, and
 to whom re-
 sponsible.
 Ib.

Art. 1059. It shall be the duty of the court of criminal appeals to
 procure a seal for said court at each place at which it may hold its
 sessions, said seals to be of the same size and design, and have a
 star with five points with the words "Court of Criminal Appeals of
 Texas" engraved on each of them.

Seal of court.
 Ib.

CHAPTER TWENTY-SIX.

REPORTER TO THE COURT OF CRIMINAL APPEALS.

<p>Reporter, removal of, compensation and duties; reports, etc.....1060</p>	<p>Article</p>	<p>Clerk to furnish reporter with opinions, records, etc.....1061</p>	<p>Article</p>
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Reporter, removal of, compensation and duties, and reports, how published, etc.
Ib.

Article 1060. Said court is hereby authorized and required to appoint a reporter of its decisions, as may be required by law to be published. Said reporter may be removed by the court for inefficiency or neglect of duty. Said reporter shall receive an annual salary of three thousand dollars, payable monthly upon the certificate of the presiding judge of said court. The volume of the decisions of said court shall be styled Texas Criminal Reports, and shall be numbered in continuation of the present number of the court of appeals reports. Said volumes shall be printed and disposed of as is now or may hereafter be provided by law for the printing and distribution of the reports of the supreme court.

Clerk to furnish reporter with opinions, records, etc.
Ib.

Art. 1061. 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.

CHAPTER TWENTY-SEVEN.

SPECIAL PROVISIONS RELATING TO THE COURT OF CRIMINAL APPEALS.

<p>Proceedings when jurisdiction of lower court has been changed pending appeal..1062</p>	<p>Article</p>	<p>Cost to be taxed, how, on disposition of case, in the court of criminal appeals..1063</p>	<p>Article</p>
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Proceedings when jurisdiction of lower court has been changed, pending appeal.
Ib.

Article 1062. When the court from which an appeal has been or may hereafter be taken has been or shall be deprived of jurisdiction over any case pending such an appeal, and when such case shall have been or may hereafter be determined by the court of criminal appeals, the mandate of said court of criminal appeals shall be directed to the court to which jurisdiction has been or may hereafter be given over such case.

Costs to be taxed, how, on disposition of case in the court of criminal appeals.
Ib.

Art. 1063. In every state case of a less grade than felony in which an appeal is taken to the court of criminal 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 sureties on his recognizance, for which execution shall issue as in other cases of appeal to the court of criminal appeals. Should such case be reversed by the court of criminal 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 criminal 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 criminal 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.

TITLE XXVIII.

Courts--District.

CHAPTER ONE.

THE JUDGE OF THE DISTRICT COURT.

	Article		Article
Election, qualification and residence.....	1064	Special judge elected.....	1071
Term of office.....	1065	Electoral body, how constituted.....	1072
Oath of office.....	1066	Mode of conducting election.....	1073
Vacancy in office, how filled.....	1067	Failure of clerk or sheriff to act.....	1074
Disqualification, causes of.....	1068	Record of election.....	1075
Special judge by agreement or appointment.....	1069	Effect of such record.....	1076
Record of election or appointment of.....	1070	Other similar elections.....	1077

Article 1064. [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.

District judge,
election of.

Qualification.

Residence.
(Const., art 5,
§7.)

Art. 1065. [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.

Term of office,
(Ib. and art.
16, §17.)

Art. 1066. [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.

Oath of office.
(Const., art.
16, §1.)

Art. 1067. [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.

Vacancy in
office, how
filled.
(Ib. art. 5,
§28.)

Art. 1068. [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.

Disqualifica-
tion, causes
of.
(Ib., art. 5,
§11.)

Art. 1069. Whenever any case or cases are called or pending in which the district judge or the special judge chosen is 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

Parties may
agree or gov-
ernor may
appoint spec-
ial judge,
when.
(Acts of 1879,
p. 1.)

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 and proceed to the trial or disposition of such cause immediately, if the trial is pending, otherwise, when called or reached, as in other cases.

Record to be made where special judge is agreed on or appointed. (Act Aug. 15, 1876, p. 141, §2.)

Art. 1070. [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—

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.

Special judge, when and how elected. (Act Aug. 15, 1876, p. 140, §1.)

Art. 1071. [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.

Electoral body, how constituted. (Act Aug. 15, 1876, p. 140, §2.)

Art. 1072. [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.

Mode of conducting the election. (Act Aug. 15, 1876, p. 140, §1.)

Art. 1073. [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.

Failure or refusal of officers to act. (Act Aug. 15, 1876, p. 141, §2.)

Art. 1074. [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 tempore to do the duties of such officers respectively.

Record of the election, etc. Ib.

Art. 1075. [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—

1. The names of all the practicing lawyers present and participating in such election.

2. The fact that the 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 has been duly administered to the special judge.

Art. 1076. [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. Effect of such record.
Ib.

Art. 1077. [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. Other similar elections from time to time.
Ib.

CHAPTER TWO.

THE CLERK OF THE DISTRICT COURT.

Article	Article
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	Indexes to all judgments.....1094
	Shall transfer records to his successor.....1095
	Single clerk for district and county courts in certain counties.....1096
	When acting as district clerk to use seal of said court.....1097

Article 1078. [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. Clerk, how elected.
Term of office.
(Const., art. 5,
§9; art. 16,
§17.)

Art. 1079. [1101] Whenever a vacancy may, from any cause, occur in the office of the 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. Where such vacancy occurs in a county having two district courts the same shall be filled by the judges of such courts, and in such case the governor upon the certificate of such district judges shall order a special election to fill such vacancy. Vacancy in office of clerk, how filled.
Ib.
(Act. Aug. 19,
1876, p. 233,
§1.)
(Acts of 1891,
p. 5.)

Art. 1080. In all cases wherein any district clerk in this state is, or shall hereafter be, a party to any pending or proposed suit, motion or proceeding in his court, the district judge in whose court the same may be pending or proposed shall, either in term time or in vacation, on application of any person interested, or of his own motion, appoint a clerk pro tempore for the purposes of such suit, motion or proceeding. District clerk pro tem., appointed, when.
(Acts of 1887,
p. 102.)

Art. 1081. Any person so appointed clerk shall take the oath to faithfully and impartially perform the duties of such appointment, and shall also enter into bond, payable to the state of Texas, with one or more good and sufficient sureties, in such amount as may be required by the judge, to be approved by him, and conditioned for District clerk to qualify and give bond.
Ib.

the faithful performance of his duties under such appointment. The person so appointed shall perform all the duties required by law of the clerk in the particular suit, motion or proceeding in which he may be appointed.

Bond and oath.
(Act May 11,
1846, p. 203,
§20.)
P. D. 500.

Art. 1082. [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. 1083. [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
powers of
deputies.

Art. 1084. [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. 1085. [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.

May adminis-
ter oaths and
take depositions.
(Act May 11,
1846, p. 202,
§24.)

Art. 1086. [1106] The several clerks of the district court shall have power to administer 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.

Shall keep a
record of pro-
ceedings, judg-
ments and ex-
ecutions.
(Act May 11,
1846, p. 203,
§24.)
P. D. 504.

Art. 1087. [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 the returns thereon, in record books to be kept for the purpose.

Other dockets,
etc.

Art. 1088. [1108] They shall also keep such other dockets and books as are, or may be, required by law.

Shall report
fines and jury
fees.
(Act Nov. 15,
1864, p. 7, §9.)
P. D. 401A.

Art. 1089. [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.

Art. 1090. [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. 1091. [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. 1092. [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. 48, §§1-4.)

Art. 1093. [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. 1094. [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. 1095. [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.

Art. 1096. In counties having a population of less than eight thousand persons, there shall be an election of a single clerk, who shall perform the duties of district and county clerks. He shall take the oath and give the bond required of clerks of both the district and county courts, and shall have all the powers and perform the duties of such clerks respectively. In determining the number of persons in the county under this article, the estimate shall be made on the basis of five inhabitants for every vote cast for governor in such county at the last preceding general election. Single clerk for district and county courts in certain counties. (Acts of 1879, p. 47.)

Art. 1097. [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. When acting as district clerk to use seal of said court.

CHAPTER THREE.

THE POWERS AND JURISDICTION OF THE DISTRICT COURT
AND OF THE JUDGE THEREOF.

	Article		Article
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Jurisdiction in probate matters.....	1099	To hear and determine all cases of legal and equitable cognizance.....	1106
Motions against officers.....	1100	To grant all remedial writs.....	1107
To punish contempts.....	1101	Judges may alternate, etc.....	1108
May transfer probate proceedings to county court.....	1103	May appoint attorney for pauper.....	1109
Clerk to transmit papers, records, etc.....	1104	Other powers and authority.....	1110

Original juris-
diction of the
district court,
(Const., art 5,
§8.)

Article 1098. [1117] The district court shall have original juris-
diction 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.
7. Of contested elections.

Jurisdiction in
matters of
probate.
Const., art. 5,
§8.)
(Act May 11,
1846, p. 200,
§3.)
P. D. 1406.

Art. 1099. [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, probating wills, 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. Such court shall also have appellate jurisdiction and general supervisory control over the county commissioners' court, with such exception and under such regulations as may be prescribed by law; and shall have general original jurisdiction over all causes of action whatever, for which a remedy or jurisdiction is not provided by law or the constitution, and such other jurisdiction, original and appellate, as may be provided by law.

(Amendment,
1891.)

Motions
against
sheriffs,
attorneys, etc.
(Act May 11,
1846, p. 201, §5.)
P. D. 1408.

Art. 1100. [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 moneys collected by them and not paid over.

To punish con-
tempts.
(Act May 11,
1846, p. 201, §6.)
P. D. 1409.

Art. 1101. [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.

[Note.—Article 1102 [1221] was repealed by the Act of April 26, 1893, p. 75. The same act prescribes the procedure in such cases, and, enacted as amendments to Article 1139 of the revision of 1879, which is Article 1130 hereof, they are included as Articles 1130, 1131, 1132 and 1132a, post.]

Art. 1103. The judges of the district courts of this state may, by an order made and entered in open court upon the minutes of said court, upon the application in open court of any person interested as administrator, executor, heir, legatee, devisee, distributee, creditor or guardian in the administration of the estate of a deceased person, or in the guardianship of a minor, person of unsound mind, or habitual drunkard, pending in such court, transfer such administration or guardianship to the county court of the county in which such district court is there being held for further administration, upon satisfactory evidence that the county judge of said county is legally qualified to act as such in such administration.

May transfer probate proceedings to county court. (Acts of 1881, p. 72.)

Art. 1104. Immediately after the termination of the courts at which the order of transfer authorized by the foregoing article is made, it shall be the duty of the clerk thereof to transmit all the papers relating to such administration or guardianship, together with a transcript, certified by him under the seal of said district court, or the record of all orders, judgments and decrees of such district court in relation to such estate, to the county clerk of his county, for which services he shall be allowed such fees as are now allowed him by law for similar services, to be paid as expenses of administration.

Duty of clerk to transmit papers, records, etc. Ib.

Art. 1105. When the clerk of the district court of any county in the state, where the civil and criminal jurisdiction (or either) of the county court has been transferred to the district court, shall receive from the clerk of the county court a certified copy of a judgment rendered in any civil or criminal case in the county court, he shall immediately record such judgments in the minutes of the district court; and thereupon the said district court shall have the power to enforce said judgments by execution or otherwise, as other judgments rendered in said district court are or may be enforced.

Judgments transferred and enforced. (Acts of 1879, p. 11.)

Art. 1106. [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. 1107. [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. 1108. [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. 1109. [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. 1110. [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.

	Article		Article
Terms of the court.....	1111	Notice to be posted and return made.....	1116
Courts in unorganized counties.....	1112	Jury provided for at special term.....	1117
Special terms of the district courts.....	1113	Jurors, how summoned, etc.....	1118
Order for special term, and time fixed.....	1114	Adjournment, when and how made.....	1119
Notice, and business to be disposed of.....	1115		

Terms of court.
(Const., art. 5, §7.)

Article 1111. [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 in unorganized counties.
(Acts of 1882, p. 4.)

Art. 1112. Whenever any unorganized county within this state has become organized, or may hereafter become organized, there being no time fixed by law for holding district court in such counties, the district judge in whose judicial district such county is situated shall fix times to hold at least two terms of court each year in each of such counties, by a written declaration, to be forwarded by the district judge to the district clerk of the county, and by him spread on the minutes of the district court. When the times are so fixed they shall not be changed except by an act of the legislature.

Special terms of the district court.
(Acts of 1879, p. 42.)

Art. 1113. In any county in this state where it may become necessary in the opinion of the district judge of the district in which said county is situated, on account of an accumulation of business which can not be disposed of in the time provided for the regular term of the district court, there may be held a special term or terms of the district court, for the transaction and disposition of the accumulated business undisposed of, as hereinafter provided for.

Order for special term and time fixed.
Ib.

Art. 1114. Whenever it may become necessary, in the opinion of the district judge, to hold a special term in any county in his district, he shall cause to be entered an order to that effect upon the minutes of a regular term of the court held in said county, and in said order shall appoint the time for the holding of such special term at a day not less than thirty days after the adjournment of the regular term at which such order is entered, which order shall state the length of time deemed necessary for the holding of such special term.

Notice and business to be disposed of.
Ib.

Art. 1115. Upon the order provided for in the foregoing article being entered, the clerk of the district court of such county shall issue six notices containing a copy of the order of the court as entered, and also the name, style and number of each case appearing upon the docket of said court which will be before the court for disposition at such special term, which notice and copies shall be under seal of the court.

Notice to be posted and return made.
Ib.

Art. 1116. The sheriff shall post the true copies of said notice at six public places in such county, one of which shall be at the court house door, and shall return the original notice to the special term, with his return thereon, stating the manner in which he has executed the same, which notice and return shall be entered in full in the minutes of the court.

Jury provided for at special terms.
Ib.

Art. 1117. At any special term above provided for no grand jury shall be impaneled and no new cases can be brought to said term,

but the jury commissioners at the regular term of the court at which the order for a special term is entered, shall, under the instruction of the court, select a regular venire for each week of such special term, which shall be done in accordance with the law regulating juries for any regular term of the court; provided, that nothing herein shall be so construed as to interfere with the selecting of juries at one regular term of the court for the next regular term of the court.

Art. 1118. The juries for any special term shall be summoned in accordance with the law regulating juries at regular terms of court, and at any special term all proceedings may be had in any case which could be had at any regular term of such court, and all process issued to a previous regular term or to such special term, and all orders, judgments and decrees, and all proceedings had in any case, criminal or civil, which would be lawful if had at a regular term, shall have the same force and effect, and any proceeding had may be appealed from under the same rules, regulations and limitations as provided for in appeals from regular terms of court.

Juries, how summoned, business transacted, etc.
Ib.

Art. 1119. [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.

CHAPTER FIVE.

MISCELLANEOUS PROVISIONS RELATING TO THE DISTRICT COURT.

	Article		Article
Minutes to be read and signed.....	1120	Seal of the court.....	1122
Of proceedings before special judge....	1121	When clerk has no seal.....	1123

Article 1120. [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 to be read and signed.
(Act May 11, 1846, p. 202, §12.)
P. D. 1415.

Art. 1121. [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.

Minutes of proceedings before a special judge.

Art. 1122. [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.

Seal of the court.
(Act May 11, 1846, p. 201, §8.)
P. D. 1411.

Art. 1123. [1132] When no such seal has been provided for the court, the clerk may use a scroll until a seal can be procured.

When clerk has no seal.
(Act May 11, 1846, p. 201, §8.)
P. D. 1411.

TITLE XXIX.
Courts—County.

CHAPTER ONE.

THE COUNTY JUDGE.

<p style="text-align: right; margin-right: 10px;">Article</p> <p>County judge, election, qualification and term of office.....1124</p> <p>Oath of office.....1125</p> <p>Shall keep office at county seat.....1126</p> <p>May practice law in certain counties.....1127</p> <p>Vacancy, how filled.....1128</p> <p>Disqualification, causes of.....1129</p>	<p>Article</p>	<p>Special county judge appointed by parties.....1130</p> <p>Governor to appoint special county judge.....1131</p> <p>Governor to appoint by telegram.....1132</p> <p>Minutes of court to show proceedings.....1132a</p>
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County judge, election, qualification, term of office. (Const., art. 5, §15; art. 16, §17.) (Act June 10, 1876, p. 17, §1.)

Article 1124. [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.

Oath of office. (Acts of 1883, p. 50.)

Art. 1125. [1134] The county judge shall, before entering on the duties of his office, execute a bond with two or more good and sufficient sureties, to be approved by the commissioners' court of his county, in a sum of not less than one thousand dollars nor more than five thousand dollars, the amount of said bond to be determined and fixed by the county commissioners' court, payable to the treasurer of his county, conditioned that he will pay over to the person or officer entitled to receive it, all moneys that may come into his hands as county judge, within thirty days after he shall have received the same, and take the oath of office prescribed in the constitution, and the further oath required of the several members of the commissioners' court.

Shall keep office at the county seat. (Acts of 1883, p. 8.)

Art. 1126. [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 or the state 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 ninety days.

May practice law in certain counties. (Acts of 1879, extra session, ch. 16.)

Art. 1127. [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.

Vacancy, how filled. (Const., art 5, §28.) (Act June 10, 1876, p. 17, §1.)

Art. 1128. [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.

Disqualification; causes of. (Const., art 5, §11.) (Act June 10, 1876, p. 19, §6.)

Art. 1129. [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.

[Note.—The Act of April 26, 1893, repeals, and under the same numbers, with Article 1132a added, supersedes Articles 1130, 1131 and 1132—old numbers 1139, 1140 and 1141.]

Art. 1130. When a judge of the county court is disqualified by any of the causes above stated, the parties may, by consent, appoint a proper person to try such case.

Special county judge may be appointed by parties. (Acts of 1893, p. 75.)

Art. 1131. Whenever a judge of the county court is disqualified to try a civil case pending in the county court, 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. But when a county judge is disqualified to act in probate matters in any cause, he shall forthwith certify his disqualification in such case to the governor, whereupon the governor shall appoint some person to act as special judge in said case, who shall act from term to term until such disqualification ceases to exist.

Governor to appoint special county judge, etc. Ib.

Art. 1132. Whenever any case or cases are called, or pending, in which the county judge, or the special judge chosen, as hereinbefore provided, shall be a party, or have an interest, or have been attorney, or of counsel, or otherwise disqualified from sitting in and trying the same, no transfer of or removal of 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 county 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 or agree upon a special judge who is qualified at once, it shall be the duty of the county judge or special judge presiding to certify the fact to the governor immediately, by telegram, mail, or otherwise, whereupon the governor shall appoint a special judge, not so disqualified, to try the same. The evidence of such appointment by the governor may be transmitted by telegram, or otherwise. The special judge, after taking the oath of office prescribed by the constitution, shall proceed to the trial or disposition of such case immediately, if the trial is pending, otherwise when called or reached, as in other cases. Any special judge agreed upon or appointed to try causes shall receive the same pay for his services as is now provided by law for county judges.

Governor to appoint by telegram. Ib.

Art. 1132a. 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:

Minutes of court to show proceedings. Ib.

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 has been duly administered to

such special judge; provided, that all cases heretofore transferred by the county court to the district court on account of the disqualification of the county judge shall be considered lawful, and the district courts to which such causes have been transferred shall retain jurisdiction thereof.

CHAPTER TWO.

THE CLERK OF THE COUNTY COURT.

Article	Article
Election and term of office.....1133	Ex officio clerk of commissioners' court.....1143
Vacancy, how filled.....1134	Custody of records of deeds, etc.....1144
Clerk pro tem. appointed, when.....1135	Custody of records, etc., of said court.....1145
Pro tem. to qualify and give bond.....1136	Record of proceedings, judgments.....1146
Bond and oath.....1137	Indexes to all judgments.....1147
May appoint deputies.....1138	Other dockets, indexes, etc.....1148
Oath and powers of deputies.....1139	Report fines and jury fees.....1149
Clerk shall keep office at county seat.....1140	Shall pay over jury fees and fines.....1150
Take acknowledgments and proofs of deeds for record.....1141	Shall transfer records to his successor.....1151
Issue marriage licenses and take oaths, depositions, etc.....1142	Single clerk for district and county court in certain counties.....1152
	To use seal of county court.....1153

County clerk, election and term of office. (Const., art. 5, §20; art. 16, §17.) Article 1133. [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. 1134. [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.

County clerk pro tem appointed, when. (Acts of 1887, p. 102.) Art. 1135. In all cases wherein any county clerk in this state is, or shall hereafter be, a party to any pending or proposed suit, motion or proceeding in his court, the county judge in whose court the same may be pending or proposed shall, either in term time or in vacation, on application of any person interested, or of his own motion, appoint a clerk pro tempore for the purposes of such suit, motion or proceeding.

County clerk pro tem to qualify and give bond. Ib. Art. 1136. Any person so appointed clerk shall take the oath to faithfully and impartially perform the duties of such appointment, and shall also enter into bond, payable to the state of Texas, with one or more good and sufficient sureties, in such amount as may be required by the judge, to be approved by him, and conditioned for the faithful performance of his duties under such appointment. The person so appointed shall perform all the duties required by law of the clerk in the particular suit, motion or proceeding in which he may be appointed.

Bond and oath. (Act May 25, 1876, p. 10, §2.) P. D. 500. Art. 1137. [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.

Art. 1138. [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.

May appoint deputies.
(Act May 25, 1876, p. 10, §3.)

Art. 1139. [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.

Oath and power of deputies.
(Act May 25, 1876, p. 10, §4.)

Art. 1140. [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. 1141. [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. 1142. [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. §6.

Art. 1143. [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. 52, §8; May 25, 1876, p. 10, §1.)

Art. 1144. [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.)

Custody of records, etc., of said court.
Ib.

Art. 1145. [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.

Keep a record of proceedings, judgments, etc.
Ib.
P. D. 504.

Art. 1146. [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.

Index to all judgments.
(Act June 21, 1876, p. 25, §1.)

Art. 1147. [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.

Other dockets, indexes, etc.

Art. 1148. [1155] They shall also keep such other dockets, books and indexes as are and may be required by law.

Report fines and jury fees.
(Act June 16, 1876, p. 23, §24.)

Art. 1149. [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 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. 1150. [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. 1151. [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 courts in certain counties.
(Const., art. 5, §20.)

Art. 1152. [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. 1153. [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.....1154	Both law and equity powers.....1162
Concurrent original jurisdiction.....1155	To grant remedial writs.....1163
Forfeited bonds in criminal cases.....1156	To appoint attorney for paupers.....1164
Jurisdiction denied in certain cases.....1157	Additional authority, where expressly granted.....1165
Appellate jurisdiction.....1158	Changed jurisdiction recognized, eminent domain retained.....1166
Certiorari to justices' courts.....1159	
Motions against certain officers.....1160	
To punish contempts.....1161	

Article 1154. [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.

Exclusive original jurisdiction. (Const., art. 5, §16.) (Act Aug. 18, 1876, p. 172, §3.)

Art. 1155. [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, exclusive of interest.

Concurrent original jurisdiction. Ib.

Art. 1156. [1163] The county court shall also have jurisdiction to enter final judgment on all forfeited bonds taken in criminal cases pending in said court.

Forfeited bonds in criminal cases. (Act Aug. 18, 1876, p. 172, §3.)

Art. 1157. [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.

Jurisdiction denied in certain cases. (Const., art. 5, §16; art. 5, §8.) (Act Aug. 18, 1876, p. 172.)

Art. 1158. [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. 1159. [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. 1160. [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. 1161. [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. 1162. [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.

To grant remedial writs. (Const., art. 5, §16.) (Act June 16, 1876, p. 19, §5.)

Art. 1163. [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 appoint attorney for pauper. (Act May 11, 1846, p. 200, §11.) P. D. 1414.

Art. 1164. [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.

Additional authority, where expressly granted.

Art. 1165. [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.

Changed jurisdiction recognized; eminent domain retained. (Acts of 1885, p. 77.)

Art. 1166. Where the jurisdiction of the county court of the several counties of this state has been taken away, altered or changed by existing laws, the same shall remain as established until otherwise provided by law; provided, however, that jurisdiction shall obtain in all matters of eminent domain over which the county courts have jurisdiction by the general laws of this state.

CHAPTER FOUR.

THE TERMS OF THE COUNTY COURT FOR CIVIL AND PROBATE BUSINESS.

	Article		Article
Terms of the county court.....	1167	Adjournment of term when the county judge fails to appear.....	1169
Commissioners' court may fix.....	1168		

Terms of the county court. (Const. amendment, 1883, art. 5, §29.)

Article 1167. The county court shall hold at least four terms for both civil and criminal business annually as may be provided by the legislature, or by the commissioners' court of the county under authority of law, and such other terms each year as may be fixed by the commissioners' court; provided, the commissioners' court of any county having fixed the times and number of terms of the county court, shall not change the same again until the expiration of one year. Said court shall dispose of probate business either in term time or vacation under such regulation as may be prescribed by law. Prosecutions may be commenced in said courts in such manner as is or may be provided by law, and a jury therein shall consist of six men. Until, or unless, otherwise provided the terms of the county court shall be held on the first Monday in February, May, August and November, and may remain in session three weeks.

Commissioners' court may fix. (Acts of 1885, p. 53.)

Art. 1168. The county commissioners' courts of the several counties in this state may, at a regular term thereof, by an order entered upon the records of said courts, provide for more terms of the county court for the transaction of civil, criminal and probate business, and fix the times at which each of the four terms required by the constitution and the terms exceeding four, if any, shall be held, not to exceed six annually, and may fix the length of said terms; provided, that when the commissioners' court shall have fixed the number of terms of the county court by an order entered of record said court shall not change the number of terms of the county court for one year from the date of the entry of the original order fixing the terms of the county court.

Art. 1169. 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	1170	Probate day to be designated.....	1174
Minutes of proceedings before special judge	1171	Proceedings when case is transferred to district court.....	1175
Seal of the court.....	1172	Jurisdiction taken away, judgments to be transferred	1176
When clerk has no seal may use scroll.....	1173		

Article 1170. [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 the court to be read and signed. (Act May 11, 1846, p. 200, §12.)

Art. 1171. [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.

Minutes of proceedings before special judge.

Art. 1172. [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.

Seal of the court. (Act June 16, 1876, p. 23, §22.) P. D. 1411

Art. 1173. [1178] When no such seal has been provided for the court, the clerk may use a scroll until a seal can be procured.

When clerk has no seal, may use scroll. (Act May 11, 1846, p. 200, §12.) P. D. 1411.

Art. 1174. [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.

Probate day to be designated. (Act June 16, 1876, p. 22, §20.)

Art. 1175. [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.

Proceedings when case is transferred to the district court. (Act June 10, 1876, p. 19, §6.)

Art. 1176. It shall be the duty of the clerks of the county courts of the several counties in this state, where the civil and criminal jurisdiction (or either) of the county court has been transferred to the district court, to make out a certified copy of all judgments remaining unsatisfied, which have been rendered in civil or criminal cases in the county court, and transmit the same to the clerk of the district court of their respective counties.

Jurisdiction taken away; judgments to be transferred. (Acts of 1879, p. 10.)

TITLE XXX.

Courts—District and County, Practice in.

CHAPTER ONE.

INSTITUTION OF SUITS.

	Article		Article
Suit commenced with petition filed by the clerk.....	1177	Clerk's file docket.....	1179
Duty of the clerk.....	1178	Civil suits not to be instituted on Sunday, etc.....	1180

Suits commenced by petition filed with clerk. (Act May 13, 1846, p. 363, §3.) P. D. 1425.

Article 1177. [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.

Duty of the clerk on receiving petition. Ib. §6. P. D. 1428.

Art. 1178. [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.

Clerk's file docket. Ib. §6. P. D. 1428.

Art. 1179. [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.

Civil suits not to be instituted on Sunday, etc. Ib. §2. P. D. 1424.

Art. 1180. [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.

	Article		Article
System of pleading.....	1181	Pleading special acts of the legislature.....	1187
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System of pleading. (Act Feb. 5, 1840, p. 83, §1.) P. D. 979.

Article 1181. [1185] The pleadings in all civil suits in the district and county courts shall be by petition and answer.

Pleadings to be in writing, signed and filed.

Art. 1182. [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. 1183. [1187] The pleading 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.

Pleadings defined.

Art. 1184. [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.

Pleadings of an intervenor.

Art. 1185. [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.

Pleadings in particular cases.

Art. 1186. [1190] In pleading the charter or act of incorporation of any corporation, public or private, 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 was duly incorporated, and such allegation by either party shall be taken as true, unless denied by the affidavit of the adverse party, his agent or attorney.

Pleading charters and acts of incorporation. (Act Feb. 14, 1860, p. 116, §1.) P. D. 1518. (Acts of 1883, p. 103.)

Art. 1187. [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.

Pleading special act of the legislature.

Art. 1188. [1192] All parties to a suit may in vacation amend their pleadings, may file suggestions of death and make representative parties, and make new parties, and file such other pleas with the clerk of the court in which such suit is pending as they may desire. And any party may in vacation intervene in any suit pending such amendments and pleas, subject to be stricken out at the next term of the court on motion of the opposite party to the suit for sufficient cause shown or existing, to be determined by the court; provided, that it shall be the duty of the party filing such pleading to notify the opposite party or their attorneys of the filing of such papers within five days from the filing of the same. All amendments to pleadings, pleas and pleas of intervention, must, when court is in session, be filed under leave of the court, upon such terms as the court may prescribe, before the parties announce ready for trial, and not thereafter.

Pleadings may be amended. (Acts of 1889, p. 3.)

Art. 1189. [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.

Time of filing amendment. (Act May 13, 1846, p. 363, §34.) P. D. 54.

Art. 1190. [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.

Pleadings amended after arrest of judgment, etc. (Act May 13, 1846, p. 363, §114.) P. D. 1475.

CHAPTER THREE.

PLEADINGS OF THE PLAINTIFF.

	Article	Article
Requisites of the petition.....	1191	Denial of special defenses presumed.....
Defensive matters by plaintiffs.....	1192	1193

<p>Requisites of the petition. (Act May 13, 1846, p. 363, §5.) P. D. 1427.</p> <p>Defensive matters pleaded by plaintiff.</p> <p>Denial of special defenses presumed.</p>	<p>Article 1191. [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.</p> <p>Art. 1192. [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.</p> <p>Art. 1193. [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.</p>
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CHAPTER FOUR.

VENUE OF SUITS.

	Article	Article
In what counties suits shall or may be brought	1194	When water course or highway is county boundary
		1195

<p>Venue, general rule. (Act Dec. 10, 1863.) P. D. 1423.</p> <p>Exceptions: married women. P. D. 1423.</p> <p>Transient persons. P. D. 1423.</p> <p>Non-residents and persons whose residence is unknown.</p> <p>Several defendants residing in different counties. P. D. 1423.</p> <p>Contract in writing to be performed in a particular county. Ib.</p> <p>Executors, administrators, etc. Ib.</p>	<p>Article 1194. [1198] 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:</p> <ol style="list-style-type: none"> 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. 2. Where the defendant is a transient person, in which case he may be sued in any county in which he may be found. 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. 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. 5. Where a person has contracted in writing to perform an obligation in any particular county, in which case suit may be brought either in such county, or where the defendant has his domicile. 6. Where the suit is against an executor, administrator or guardian, as such, to establish a money demand against the estate which
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he represents, in which case the suit must be brought in the county in which such estate is administered.

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.
Ib.

8. Any suit for damages growing out of the suing out of any writ of attachment or sequestration, or for the levy of any such writ, may be brought in any county from which such writ was issued, or in any county where such levy was made, in whole or in part, within this state.

When attachment sued out or levied.
(Acts of 1889, p. 48.)

9. 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.

10. 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.
Ib.

11. 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.
Ib.

12. 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.
Ib.

13. 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.

14. 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.
Ib.

15. In breach of warranty of title to lands, where the vendors liable thereon live in different counties, the plaintiff may bring his action in any county where either of such vendors reside, and join all other vendors in one and the same suit.

Breach of warranty.
(Acts of 1887, p. 69.)

16. 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.)

17. 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.

Injunctions, etc.
(Act May 13, 1846.)
P. D. 3932.

18. 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.

To revise proceedings of county court in probate matters.
(Act Aug. 9, 1876, p. 128, §§128, 130.)

19. Suits against any county shall be commenced in some court of competent jurisdiction within such county.

Suits against counties.
(Act April 11, 1846.)

20. 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.

P. D. 1047.
Heads of departments.
P. D. 1407.

Forfeiture of charters granted by the legislature. (Act Aug. 21, 1876, p. 312, §2.)

Suits to set aside fraudulent alienations of lands granted to railway companies. (Const., art. 14, §5.)

Private corporations, associations, etc.

(Act March 21, 1874, p. 31.)
P. D. 601ff, 601h.

(Act to adopt and establish R. C. S., passed Feb. 21, 1879.)
(Acts of 1887, p. 122.)

Mechanics, laborers and operatives for their wages. (Acts of 1879, p. 8.)

Foreign, private or public corporations, etc. (Acts of 1887, p. 131.)

Fire, marine, life and accident insurance companies.

(Act April 17, 1874, p. 107.)
P. D. 601ff.

Venue prescribed by particular law.

When water course or highway is county boundary. (Act May 11, 1846.)
P. D. 1421.

21. 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.

22. 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.

23. 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. Suits against receivers of persons and corporations may also be brought as provided for in article 1484.

24. Suits by mechanics, laborers and operatives, for their wages due by railroad companies, may be instituted and prosecuted in any county in this state where such labor was performed, or in which the cause of action or part thereof accrued, or in the county in which the principal office of such railroad company is situated, and in all such suits service of process may be made in the manner now required by law.

25. Foreign, private or public corporations, joint stock companies or associations, not incorporated by the laws of this state, and doing business within this state, may be sued in any court within this state having jurisdiction over the subject matter, in any county where the cause of action or a part thereof accrued, or in any county where such company may have an agency or representative, or in the county in which the principal office of such company may be situated; or when the defendant corporation has no agent or representative in the state, then in the county where the plaintiffs or either of them reside.

26. 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.

27. 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.

Art. 1195. [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.

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alone, when	1204		

Article 1196. [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. 1197. [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. 1198. [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. 1199. [1203] In cases arising under the provisions of title fifty-seven (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. 1200. [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. 1201. [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. 1202. [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. 363, §41.) P. D. 9.

Art. 1203 [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, 46; Jan. 25, 1840, p. 144, §6.) P. D. 1426, 1448-9, 225. (Act to adopt and establish R. C. S., passed Feb. 21, 1879.)

Parties conditionally liable may be sued, when.
lb.

Art. 1204. [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 can not be ascertained by the use of reasonable diligence, or when he is dead, or actually or notoriously insolvent. Whenever a sheriff, constable, or a deputy of either, has been sued for damages for any act done in their official character, and they have taken indemnifying bonds for such acts so done by them, upon which said acts suits for damages are based, the said sheriffs, constables or their deputies shall have the right to make the parties, principal and surety on such bond of indemnity, parties defendant in such suit for damages, and the cause may be continued for the purpose of obtaining service on such parties so made in said cause.

(Acts of 1885, p. 90.)

Sureties on official bonds, when joined.
(Acts of 1891, p. 85.)

Art. 1205. In any suit brought by the state of Texas, or any county of said state, against any officer who has held an office for more than one term and has given more than one official bond, the sureties on each and all of such bonds may be joined as defendants in one and the same suit, whenever it is alleged in the petition that it is difficult to determine when the default sued for occurred and which set of sureties on such official bonds is liable therefor.

When different officials and their bondsmen may be joined.
lb.

Art. 1206. In any suit by the state of Texas upon the official bond of any state officer, any subordinate officer who has given bond, payable either to the state or to such superior officer, to cover the default sued for, or any part thereof, together with the sureties or his official bond, may be joined as defendants in one and the same suit with such superior officer and his bondsmen, whenever it is alleged in the petition that both of such officers are liable for the money sued for, to the end that all equities may be adjusted between them in one suit.

Suit in the name of the state for the use of others.
lb.

Art. 1207. Whenever any official bond is made payable to the state of Texas, or any officer thereof, and a recovery thereon is authorized by or would inure to the benefit of parties other than the state, suit may be instituted on such bond in the name of the state alone for the benefit of all parties entitled to recover thereon.

Additional parties may be brought in, when.

Art. 1208. [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. 1209. [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. 1210. [1211] In all cases where a minor may be 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.
(Acts 1895, p. 80.)

Art. 1211. [1212] In all cases when a minor, lunatic, idiot or a non compos mentis may be a defendant to a suit, and it shall be shown to the court that such minor, lunatic, idiot or non compos

mentis has no guardian within the state, it shall be the duty of the court to appoint a guardian ad litem for such minor, lunatic, idiot or non compos mentis for the purpose of defending such suit, and to allow him a reasonable compensation for his services, to be taxed as a part of the costs of suit.

CHAPTER SIX.

PROCESS AND RETURNS.

Article	Article
Requisites of citation; when to issue.....1212	Time of service of citation.....1228
One citation to each county where there is a defendant.....1213	Same.....1229
Citation shall contain, what.....1214	Citation to defendants without the state.....1230
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Alias process.....1227	Motion constitutes appearance, when.....1243
	Reversal of judgment in appearance.....1244
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Article 1212. [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.

Art. 1213. [1214] If there be several defendants, residing in different counties, one citation shall issue to each of such counties.

Art. 1214. [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 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 1447.

Art. 1215. [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. 1216. [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.

Art. 1217. [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.

Art. 1218. [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

Citation to issue, when. (Act Feb. 6, 1854, p. 53, §9.) P. D. 1430.

One citation to each county where there is a defendant.

Citation shall contain, what. (Acts Feb. 6, 1854, p. 53, §9; May 13, 1846, p. 363, §10; Nov. 12, 1866, p. 199, §1.) 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.

Citation where sheriff is a party. (Act May 13, 1846, p. 363, §21.) P. D. 1437.

Duty of officer receiving citation. (Act May 13, 1846, p. 363, §14.)

P. D. 1438. Service of citation within the county.

if there be more than one, then to each defendant in person, a true copy of the citation.

Service with-
out the
county.

(Act May 13,
1846, p. 363,
§14.)

P. D. 1433.

Citation in
suits against
counties.

(Act May 11,
1846, p. 320,
§5.)

P. D. 1048.

Against cit-
ies, towns,
etc.

(Act Feb. 6,
1854, p. 53, §9.)

P. D. 1430.

Against incor-
porated com-
panies and
joint stock as-
sociations.

(Acts March
21, 1874, p. 22,
§2; April 17,
1874, p. 10, §2;
Feb. 6, 1854,
p. 53, §9.)

(Act Feb. 7,
1854, p. 55, §4.)

P. D. 1430,
4888.

(Acts of 1887,
p. 122, §9.)

Foreign cor-
porations,
how served.

(Acts of 1885,
p. 79.)

Against part-
ners.

(Act Feb. 5,
1858, p. 110,
§2.)

P. D. 1514.

Return of ci-
tation.

(Act March 16,
1848, p. 106,
§11.)

P. D. 1507.

Return of ci-
tation not
served.

Alias process.

(Act May 13,
1846, p. 363,
§19.)

P. D. 1435.

Time of ser-
vice of cita-
tion.

(Acts of 1891,
p. 94.)

Same subject.
Ib.

Art. 1219. [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.

Art. 1220. [1221] In suits against any county the citation shall be served on the county judge of such county.

Art. 1221. [1222] In suits against any incorporated city, town or village, the citation may be served on the mayor, clerk, secretary or treasurer thereof.

Art. 1222. [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; and in suits against receivers of railroad companies service may be had upon the receiver or upon the general or division superintendent or upon any agent of the receiver who resides in the county in which the suit is brought.

Art. 1223. In any suit against a foreign, private or public corporation, joint stock company or association or acting corporation or association, citation or other process may be served on the president, vice-president, secretary or treasurer, or general manager, or upon any local agent within this state, of such corporation, joint stock company or association, or acting corporation or association.

Art. 1224. [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.

Art. 1225. [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.

Art. 1226. [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.

Art. 1227. [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 the 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.

Art. 1228. [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 be served at least ten days before the first day of such return term exclusive of the days of service and return.

Art. 1229. [1229] If the citation be issued too late, or if it can not be served at least ten 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.

Art. 1230. [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.

Citation to defendant without the state. (Act March 15, 1875, p. 170, §2.)

Art. 1231. [1231] Such notice may be served by any disinterested person competent to make oath of the fact.

By whom served. Ib.

Art. 1232. [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.

Service in such cases. Ib.

Art. 1233. [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.

Return of such service. Ib.

Art. 1234. [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.

Effect of such service.

Art. 1235. [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.

Citation by publication. (Acts March 16, 1848, p. 106, §13; March 15, 1875, p. 170, §1.) (Acts 1879, ch. 96, p. 103.) P. D. 25.

Art. 1236. [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

For unknown heirs. (Acts Nov. 9, 1866, p. 125, §1; March 16, 1848, p. 106, §26.) P. D. 5460, 26.

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. [1237] The citations provided for in the two preceding articles shall contain the requisites prescribed in article 1447.

Art. 1238. [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.

Art. 1239. [1239] Any mistake or informality in a return may be corrected by the officer at any time under the direction of the court.

Art. 1240. [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.

Art. 1241. [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.

Art. 1242. [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.

Art. 1243. [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.

Art. 1244. [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.

Art. 1245. [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.

Citation by publication to contain same requisites as other writs. (Act to adopt and establish R.C.S., passed Feb. 21, 1879.) Return of citation by publication.

Mistake in return may be corrected. (Act May 13, 1846, p. 363, §18.)

P. D. 53. Acceptance of service of process. (Act May 13, 1846, p. 363, §§12, 13.) P. D. 1508, 1432.

Entering appearance in open court. *Ib.*

Answer constitutes appearance. *Ib.*

Motion constitutes appearance, when.

Reversal of judgment an appearance.

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	Suit to the use of another.....1254
Scire facias to executor, etc.....1247	Death of party to suit for injuries result- ing in death.....1255
Death of defendant.....1248	When some defendants not served.....1256
When executor, etc., dies.....1249	Discontinuance as to principal obligor.....1257
Surviving parties1250	Discontinuance in vacation.....1258
Death between verdict and judgment.....1251	As to defendant not served.....1259
Marriage of plaintiff feme sole.....1252	When defendant has filed counter claim.....1260
Marriage of defendant feme sole.....1253	Requisites of scire facias and returns.....1261

Article 1246. [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 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.

Suit not to abate where plaintiff dies, if, etc.
(Act May 13, 1846, p. 363, §38.)
P. D. 6.

Art. 1247. [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.

Scire facias to executor, etc.
Ib.

Art. 1248. [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.

Death of defendant.
Ib. §39.
P. D. 7.

Art. 1249. [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.

Where executor, etc., dies.
P. D. 6, 7.

Art. 1250. [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.

Surviving parties.
Ib. §36.
P. D. 4.

Death between verdict and judgment.
Ib. §37.
P. D. 5.
(Act to adopt and establish R.C.S., passed Feb. 21, 1879.)

Art. 1251. [1251] Where in any suit either party shall die between verdict and judgment, the judgment shall be entered as if both parties were living.

Marriage of plaintiff feme sole.
Ib. §40.
P. D. 8.

Art. 1252. [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. [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. [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.

Death of party to suit for injuries resulting in death.
(Act Feb. 2, 1860, p. 32, §4.)
P. D. 18.

Art. 1255. [1255] In cases arising under the provisions of title fifty-seven 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.

Where some of defendants not served.
(Act May 13, 1846, p. 363, §45.)
P. D. 1448.

Art. 1256. [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.

Discontinuance as to principal obligor.
Ib.
P. D. 1449, 1426, 225.

Art. 1257. [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 in vacation.
Ib. §28.
P. D. 1440.

Art. 1258. [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.

Art. 1259. [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. [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. [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.

<p>Answer may include several matters.....1262 To be filed, when.....1263 In cases of citation by publication.....1264 Certain pleas to be by affidavit.....1265 Plea of payment, counter claim, etc.....1266</p>	<p>Article</p>	<p>General denial need not be repeated....1267 Pleas to be filed in due order.....1268 Certain pleas to be determined during the term at which filed.....1269</p>	<p>Article</p>
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Article 1262. [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.

Art. 1263. [1263] In all cases in which the citation has been personally served at least ten 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 county and district courts, on or before the second day of the return term, and before the call of the appearance docket on said second day.

Answer to be filed, when. (Act May 13, 1846, p. 363, §§10, 12; June 16, 1876, p. 22, §18.) P. D. 1506, 1508. (Acts of 1891, p. 94; amend., 1893, p. 31.)

Art. 1264. [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.

Answer in cases of citation by publication. (Act May 13, 1846, p. 363, §12.)

Art. 1265. [1265] An answer setting up any of the following matters, unless the truth of the pleadings appear of record, shall be verified by affidavit:

Certain pleas to be verified by affidavit. (Act May 13, 1846, p. 363, §31.)

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 not duly incorporated as alleged.

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. (Acts of 1883, p. 4.)

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 313.

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.

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

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.

Plea of payment, counter claim, etc. (Act Feb. 5, 1840, p. 62, §2.) P. D. 3444.

Art. 1266. [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.

General denial need not be repeated.

Art. 1267. [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.

Pleas to be filed in due order, etc. (Act May 13, 1846, p. 363, §32.) P. D. 2.

Art. 1268. [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.

Certain pleas to be determined during the term at which filed. Ib. §33. P. D. 3.

Art. 1269. [1269] Pleas to the jurisdiction, pleas in abatement, and other dilatory pleas and demurrers, 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

By consent of parties. (Act June 21, 1876, p. 25, §1.)

Article 1270. [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.

Granted on application, when. (Act April 7, 1874, p. 67, §1.) P. D. 5885a.

Art. 1271. [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:

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. [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 the credibility of the persons making the application for a change of venue, or their means of knowledge, or the truth of the facts set out in the said application, are attacked by the affidavit of a credible person; and if such application is thus attacked, the issue thus formed shall be tried by the judge, and the application granted or refused, as the law and the facts shall warrant.

Shall be granted, unless, etc.
Ib. §4.
P. D. 5885d.
Amend., 1893,
p. 2.

Art. 1273. [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. [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 be hereafter 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 1194.

In case of new counties.
(Act July 29,
1876, p. 74, §1.)

Art. 1275. [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	Second and subsequent applications.....	1278
First application, requisites of.....	1277	Business not disposed of continued by operation of law.....	1279

Continuance not to be granted, except, etc. (Act March 16, 1848, p. 363, §15.)

P. D. 1509.

First application, requisites of.

Ib.

Second and subsequent applications.

Ib.

Business not disposed of continued by operation of law.

(Act May 13, 1846, p. 363, §95.)

P. D. 1462.

Article 1276. [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.

Art. 1277. [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.

Art. 1278. [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.

Art. 1279. [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.

CHAPTER ELEVEN.

TRIAL OF CAUSES.

Article	Article
Appearance day.....1280	Compensation of stenographer.....1296
Call of appearance docket.....1281	Order of proceedings on trial by jury.....1297
Judgment by default.....1282	Additional testimony allowed, when.....1298
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Damages on liquidated demands, how assessed.....1284	Charge and instructions.....1300
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	Adjournment of court discharges.....1313
	Case to be tried again.....1314
	Court may proceed with business.....1315

Article 1280. [1280] The second day of each term of the district or county court is termed appearance day.

Appearance day.
(Acts of 1891, p. 94.)

Art. 1281. [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.

Call of the appearance docket.

Art. 1282. [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.

Judgment by default.
(Act May 13, 1846, p. 363, §12.)
P. D. 1508.

Art. 1283. [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. [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. [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. [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. [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. [1288] Every suit shall be tried when it is called, unless it be continued or 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.

Day set for jury docket. (Acts of 1881, p. 5.)

Art. 1289. [1289] The court shall, 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 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, etc., shall, as far as practicable, be heard and determined by the court 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.

Call of non-jury docket.

Art. 1290. [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.

Issues of law and dilatory pleas, when tried. (Act May 13, 1846, p. 363, §33.)

Art. 1291. [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.

Trial by the court.

Art. 1292. [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.

Agreed case. (Act Feb. 5, 1858, p. 110, §12.)

Art. 1293. [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.

Cases brought up from inferior courts, tried de novo. (Act May 13, 1846, p. 363, §§59, 60.)

Art. 1294. [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. [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. [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. [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.

8. 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.

Art. 1298. [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 testimony, on such terms and under such limitations as the court may prescribe.

Additional testimony allowed, when.

Art. 1299. [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.

Order of argument.

Art. 1300. [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.

Charge and instructions. (Act Feb. 6, 1853, p. 19, §99.) P. D. 1464.

Art. 1301. [1301] At any time before the jury have retired the plaintiff may take a nonsuit, 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 nonsuit may be taken at any time before the decision is announced.

Non-suit may be taken, when. Ib. P. D. 1464.

Art. 1302. [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.

Foreman of jury.

Art. 1303. [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.

Jury may take papers with them, except, etc. Ib. P. D. 1464.

Art. 1304. [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. [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 a 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. [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. [1307] When the jury wish to communicate with the court, they shall make their wish known to the officer having them

Jury may communicate with the court.

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.

May ask further instruction.
 lb.
 P. D. 1464.

Art. 1308. [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 have witness recalled.

Art. 1309. [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 deposition, etc., re-read.

Art. 1310. [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.

Disagreement of jury.

Art. 1311. [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.

May be discharged by the court.
 (Const., art 5, §13.)

Art. 1312. [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.

Final adjournment of court discharges.
 Case to be tried again.

Art. 1313. [1313] The final adjournment of the court before the jury have agreed upon a verdict discharges them.

Art. 1314. [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.

Court may proceed with other business.

Art. 1315. [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.

CHAPTER TWELVE.

CHARGES AND INSTRUCTIONS TO THE JURY.

	Article		Article
Court may charge the jury.....	1316	Instructions refused constitute part of	
Requisites of the charge.....	1317	bill 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.

Article 1316. [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. [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.

Requisites of the charge. *Ib.*

Art. 1318. [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.

Charge need not be excepted to.

Art. 1319. [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.

Parties may ask instructions. (Act May 13, 1846, p. 363, §109.) P. D. 216.

Art. 1320. [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.

Instructions refused constitute part of bill of exceptions. *Ib.*

Art. 1321. [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.

Jury may carry charge, etc., with them. (Act. Feb. 5, 1853, p. 19, §99.) P. D. 1464.

CHAPTER THIRTEEN.

THE VERDICT.

Article	Article
Rendition of verdict.....1322	General verdict.....1329
Must be in writing and signed.....1323	Special verdict.....1330
Verdict received and noted.....1324	Requisites of special verdict.....1331
Jury may be polled.....1325	Special verdict conclusive.....1332
Defective or mistaken verdict.....1326	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	

Article 1322. [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.

Rendition of verdict.

Art. 1323. [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.

Must be in writing and signed. (Act. Aug. 1, 1876.) P. D. 1464.

Art. 1324. [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.

Verdict received and noted on docket.

Jury may be polled.

Art. 1325. [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.

Defective or mistaken verdict.

Art. 1326. [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 assents thereto, be reformed in accordance with such computation.

Not responsive to the issues.

Art. 1327. [1327] If the verdict is not responsive to the issue submitted to the jury, the court shall call their attention thereto, and send them back for further deliberation.

Verdicts either general or special. General verdict.

Art. 1328. [1328] The verdict of a jury is either a general or a special verdict.

Art. 1329. [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.

Special verdict. (Act May 13, 1846, p. 363, §108.)

Art. 1330. [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.

P. D. 1469. Requisites of special verdict.

Art. 1331. [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.

Special verdict conclusive. P. D. 1469.

Art. 1332. [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.

Verdict to cover all the issues submitted. (Acts of 1879, p. 119.)

Art. 1333. [1333] The jury shall render a general or special verdict, as shall be directed by the court at the request of a party to the suit, 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 facts 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 not void for want of form. (Act May 13, 1846, p. 363, §104.) P. D. 1465.

Art. 1334. [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.

CHAPTER FOURTEEN.

JUDGMENTS.

Judgments, how framed.....	Article 1335	Judgments against executors, etc.....	Article 1344
For or against one or more plaintiffs, etc.....	1336	Against executors acting independently of probate court.....	1345
But one final judgment.....	1337	Judgment in suits by publication.....	1346
Judgment may pass title.....	1338	Against partners where all not served.....	1347
Court shall enforce its own decrees; in certain cases, how.....	1339	Confession of judgment.....	1348
Judgments of foreclosure of liens.....	1340	Acceptance of service, waiver of process.....	1349
Writ of possession awarded.....	1341	Confession by attorney.....	1350
On appeals from county court.....	1342	Releases errors, but impeachable, etc.....	1351
On appeal from justice's court.....	1343	Other judgments.....	1352

Article 1335. [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.

Judgments, how framed, (Acts May 13, 1846, p. 363, §115; May 11, 1846, p. 200, §7.)
P. D. 1476, 1410.

Art. 1336. [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.

For or against one or more plaintiffs, etc.

Art. 1337. [1337] Only one final judgment shall be rendered in any cause, except where it is otherwise specially provided by law.

But one final judgment.

Art. 1338. [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.

Judgment may pass title, etc. (Act May 13, 1846, p. 363, §120.)
P. D. 1481.

Art. 1339. [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.

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.

Art. 1340. [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.

Judgment of foreclosure of liens. (Act May 13, 1846, p. 303, §119.)
P. D. 1480.

Art. 1341. [1340a] When any order foreclosing a lien upon real estate is made in a suit having for its object the foreclosure of such lien, in any court having jurisdiction, such order shall have all the force and effect of a writ of possession, as between the parties to such suit of foreclosure and any person claiming under the defendant to such suit by any right acquired pending such suit; and the court shall so direct in the judgment providing for the issuance of such order, and the sheriff or other officer executing such order of sale, shall proceed by virtue of said order to place the purchaser

Writ of possession awarded. (Acts of 1885, p. 10.)

of the property sold under the same in possession thereof within thirty days after the day of sale.

Judgment on appeal, etc., from county court.
(Act May 13, 1846, p. 363, §60.)
P. D. 1460.

Art. 1342. [1341] Judgments on appeal or certiorari from any county court sitting in probate shall be certified to such county court for observance.

On appeal, etc., from justices' court.

Art. 1343. [1342] Judgments on appeal or certiorari from any justice's court shall be enforced by the county court.

Judgments against executors, etc.
(Act May 13, 1846, p. 363, §118.)
P. D. 1479.

Art. 1344. [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.

Against executors acting independently of probate court.

Art. 1345. [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.

Judgment in suits by publication.
(Acts May 13, 1846, p. 363, §128; Nov. 6, 1866, p. 125, §1.)
P. D. 1488, 26.

Art. 1346. [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.

Against partners when all not sued.
(Act Feb. 5, 1858, p. 110, §2.)
P. D. 1514.

Art. 1347. [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 against those not served.

Confession of judgment.
(Act May 13, 1846, p. 363, §116.)
P. D. 1477.

Art. 1348. [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 should 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.

The acceptance of service and waiver of process.
(Acts of 1885, p. 33.)

Art. 1349. [1347a] The acceptance of service and waiver of process, provided for in article 1240, and the entry of appearance in open court as provided for in article 1241, or the confession of judgment as provided for in article 1348, shall not in any action be authorized by the contract or instrument of writing sued on, or any other instrument executed prior to the institution of such suit, nor shall such acceptance or waiver of service be made until after suit brought.

Confession of, by attorney.
Ib.

Art. 1350. [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.

Releases errors, but may be impeached, etc.
Ib. §117.
P. D. 1478.

Art. 1351. [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.

Other judgments, when authorized by law.

Art. 1352. [1350] The court may render such other judgment and in such form as may be authorized by law.

CHAPTER FIFTEEN.

REMITTER AND AMENDMENT OF JUDGMENT.

	Article		Article
Remitter of excess in verdict.....	1353	Misrecitals, etc., corrected in vacation or term time.....	1357
Remitter of excess in judgment in open court	1354	Correction made in vacation to be certified to clerk.....	1358
Remitter in vacation.....	1355	Correction or remitter operates to cure errors	1359
Mistake in judgment corrected in open court	1356		

Article 1353. [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. (Act May 13, 1846, p. 363, §133.) P. D. 52.

Art. 1354. [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. 1355. [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. 1356. [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.

Art. 1357. [1355] Where, in the record of any judgment, or decree of any court, there shall be any mistake, miscalculation or misrecital 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.

Misrecitals, 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. C. S., passed Feb. 21, 1879.)

Art. 1358. [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.

Correction made in vacation to be certified to clerk, etc.

Art. 1359. [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.

Correction or remitter operates to cure error. Ib. §133. P. D. 52.

CHAPTER SIXTEEN.

BILL OF EXCEPTIONS.

	Article		Article
Exception to rulings taken, when.....	1360	To be presented to the judge during the	
Requisites of bill of exceptions.....	1361	term and in ten days.....	1365
May refer to statement of facts.....	1362	Submitted to opposing counsel, etc.....	1366
Charges regarded as excepted to.....	1363	If found incorrect.....	1367
No bill necessary, when.....	1364	Judge to make out bill, when.....	1368
		Controverted bill and affidavits.....	1369

Exception to rulings taken, when, (Act May 13, 1846, p. 363, §101.) P. D. 217.

Article 1360. [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.

Requisites of bill of exceptions.

Art. 1361. [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.

May refer to statement of facts.

Art. 1362. [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.

Charges regarded as excepted to. (Act May 13, 1846, p. 363, §101.) P. D. 217.

Art. 1363. [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.

No bill of exceptions where ruling appears of record.

Art. 1364. [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.

Bill to be presented to the judge during the term and in ten days.

Art. 1365. [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.

Submitted to opposing counsel, etc.

Art. 1366. [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.

If found incorrect. (Act May 13, 1846, p. 363, §101.) P. D. 217.

Art. 1367. [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.

On disagreement, judge to make out bill, etc.

Art. 1368. [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.

Controverted bill of exceptions and affidavits relating thereto. (Act May 13, 1846, p. 363, §§101, 102.) (Acts of 1892, p. 25.)

Art. 1369. [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. When the court refuses to sign a correct bill of exceptions, such proceedings may be had in the court of civil appeals as is prescribed in article 1014.

CHAPTER SEVENTEEN.

NEW TRIALS AND ARREST OF JUDGMENT.

Article	Article
New trial may be granted.....1370	Bill of review in suits by publication.....1375
Motion for, requisites of.....1371	Petition necessary in such cases.....1376
Not more than two, except, etc.....1372	Execution not suspended, unless.....1377
Time of making motion.....1373	Sale under such execution not avoided, but, etc.....1378
Determined when.....1374	

Article 1370. [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. 1371. [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 grounds other than those specified shall be heard or considered.

Motion for
new trial, etc.,
requisites of.
Ib. §112.
P. D. 1473.

Art. 1372. [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. 1373. [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 court shall continue so long; if not, then before the end of the term.

Time of mak-
ing motion.
Ib. §112.
P. D. 1473.

Art. 1374. [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. 1375. [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. 1376. [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. 1377. [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 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.

Execution,
etc., not sus-
pended,
unless, etc.
Ib.

Art. 1378. [1376] Where in such case as is mentioned in the three preceding articles, property has been sold under the judg-

Sale under
such execu-
tion not
avoided, but,
etc.
Ib.

ment 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, how prepared.....	1379	Statement of facts not filed in time,	1382
When the parties disagree.....	1380	when considered by the court.....	1382
Made up and filed in vacation, when....	1381		

Statement of facts, how prepared. (Acts of 1892, p. 42.)

Article 1379. [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. Where it is agreed by the parties to the suit, or their attorneys of record, that the evidence adduced upon the trial of the cause is sufficient to establish a fact or facts alleged by either party, the testimony of the witnesses and the deeds, wills, records, or other written instruments, admitted as evidence relating thereto, shall not be stated or copied in detail into a statement of facts, but the facts thus established shall be stated as facts proved in the case; provided, an instrument, such as a note or other contract, mortgage or deed of trust, that constitutes the cause of action on which the petition, or answer, or cross-bill, or intervention, is founded, may be copied once in the statement of facts. When there is any reasonable doubt of the sufficiency of the evidence to constitute proof of any one fact under the preceding rule, there may then be inserted such of the testimony of the witnesses and written instruments, or parts thereof, as relate to such facts.

When the parties disagree. *Ib.*

Art. 1380. [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. 1381. [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.

Statement of facts not filed in time, when considered by court. (Acts of 1887, p. 17.)

Art. 1382. [1379a] Whenever a statement of facts shall have been filed after the times respectively prescribed in the preceding articles 1379, 1380 and 1381 of this chapter, and the party tendering or filing the same shall show to the satisfaction of the courts of civil appeals that he has used due diligence to obtain the approval and signature of the judge thereto, and to file the same within the time in this chapter prescribed for filing the same, and that his failure to file the same within said time is not due to the fault or laches of said party or his attorney, and that such failure was the

result of causes beyond his control, the courts of civil appeals shall permit said statement of facts to remain as part of the record, and consider the same in the hearing and adjudication of said cause the same as if said statement of facts had been filed in time.

CHAPTER NINETEEN.

APPEAL AND WRIT OF ERROR.

Article	Article
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"Appellant" and "appellee" defined.....	Supersedeas bond where judgment is for land or other property.....
1384	1405
"Plaintiff in error" and "defendant in error" defined.....	Judgment stayed and execution superseded.....
1385	1406
"Appellate court" and "court below" defined.....	No bond required of the state.....
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Appeal perfected, how.....	Of executors, etc.....
1387	1408
By parties of whom no appeal bond is required.....	Executor, etc., may take appeal or writ of error.....
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Citation in error.....	Agreed pleadings and proof.....
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Return, and what shall show.....	Briefs filed in court below, and notice given.....
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1397	1418
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1400	
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1401	
Appeal, etc., perfected, when.....	
1402	
Appeal, etc., on cost bond or affidavit does not suspend execution.....	
1403	

Article 1383. [1380] An appeal or writ of error may be taken to the courts of civil appeals from every final judgment of the district court in civil cases, and from every final judgment in the county court in civil cases of which the county court has original jurisdiction, and from every final judgment of the county court in civil cases of which the court has appellate jurisdiction, where the judgment or amount in controversy exceeds one hundred dollars, exclusive of interest and costs, and an appeal shall lie from an interlocutory order of the district court appointing a receiver or trustee in any cause; provided, said appeal be taken within twenty days from the entry of said order; an appeal under such cases shall take precedence in the appellate court, but the proceedings in other respects in the court below shall not be stayed during the pendency of the appeal, unless otherwise ordered by the appellate court.

Appeals to the courts of civil appeals, allowed in what cases.

Art. 1384. [1384] The party taking an appeal is called the "appellant," and the adverse party is called the "appellee."

"Appellant" and "appellee" defined.

Art. 1385. [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. [1386] The term "appellate court" includes the supreme court or court of civil 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. [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 appellants giving notice of appeal in open court within two days after final judgment, or

Appeal perfected, how.

two days after judgment overruling a motion for a new trial, which shall be noted on the docket and entered of record, and by his filing with the clerk an appeal bond, where bond is required by law, or affidavit in lieu thereof, as hereinafter provided, within twenty days after the expiration of the term. If the term of the court may by law continue more than eight weeks, the bond, or affidavit in lieu thereof, shall be filed within twenty days after notice of appeal is given, if the party taking the appeal resides in the county, and within thirty days if he resides out of the county.

By parties of whom no appeal bond is required.

Art. 1388. [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.

Writ of error sued out, when.

Art. 1389. [1389] The writ of error may, in cases where the same is allowed, be sued out at any time within twelve months after the final judgment is rendered, and not thereafter.

By petition. Ib. §140. P. D. 1495.

Art. 1390. [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.

Requisites of petition.

Art. 1391. [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 court of civil appeals for revision and correction. 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.

Error bond. Ib.

Art. 1392. [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.

Citation in error. Ib.

Art. 1393. [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.

Form and requisites of citation.

Art. 1394. [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 appear and defend such writ before the court of civil appeals within sixty days from date of service of said citation, stating the place of holding the same, according to the provisions of the law regulating the returns 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 and the description of the judgment as therein given. Such citation shall be made returnable within ten days from the issuance of the same if defendant resides in the county, and within twenty days if he resides out of the county.

Service and return of. Ib.

Art. 1395. [1395] It shall be the duty of the sheriff or constable receiving such citation to indorse the day and hour on which he receives 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.

Art. 1396. [1396] The citation shall be returned as prescribed in article 1394, and where the same has not been served the return shall show the diligence used by the officer to execute the same, and a failure to execute it, and where the defendant is to be found, so far as he has been able to ascertain.

Return and what shall show.

Art. 1397. [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.

Alias citation. Ib.

Art. 1398. [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 on the attorney of record. Ib.

Art. 1399. [1399] Service of the citation may be also made in either of the modes provided in chapter six of this title, so far the same are applicable.

Service in other modes.

Art. 1400. [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 in the court of civil appeals, supreme 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, and which may accrue in the court of civil appeals and the supreme court.

Cost bond on appeal or writ of error.

Art. 1401. [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 article, to his appeal.

Appeal, etc., by party unable to give cost bond. (Act May 3, 1871, p. 74, §1.) (Acts of 1879, ch. 81, p. 90.) P. D. 6180.

Art. 1402. [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.

Appeal or writ of error, perfected, when.

Art. 1403. [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. [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,

Supersedeas bond.

to be approved by the clerk, payable to 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 supreme court or the court of civil appeals shall be against him, he shall perform its judgment, sentence or decree, and pay all such damages as said court may award against him.

Supersedeas bond, where judgment is for land or other property.
Ib. §137.
P. D. 1492.

Art. 1405. [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.

Judgment stayed and execution superseded.
Ib. §140.
P. D. 1495.

Art. 1406. [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.

No bond required of the state.
Of executors, etc.
(Act March 16, 1848, p. 106, §4.)
P. D. 1503.

Art. 1407. [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.

Art. 1408. [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.

Executor, etc., may take appeal or writ of error.

Art. 1409. [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.

Transcript to be made out and delivered.
(Act May 13, 1848, p. 363, §133.)
P. D. 1494.

Art. 1410. [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 contain all proceedings, except, etc.
Ib.

Art. 1411. [1411] The transcript shall, except in the cases hereinafter provided, contain a full and correct copy of all the proceedings had in the cause.

Citation and return omitted, when.

Art. 1412. [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.

Omission of unimportant proceedings, when.
(Act Feb. 5, 1848, p. 110, §12.)
P. D. 1516.

Art. 1413. [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.

Agreed statement of pleadings and proof.
Ib.

Art. 1414. [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.

Transcript must contain, what.
Ib.

Art. 1415. [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.

Art. 1416. [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 transcript provided for in articles 1412, 1413 and 1414.

Clerk's certificate and indorsement. (Act May 13, 1846, p. 363, §139.) P. D. 1494.

Art. 1417. [1416a] Not less than five days before the time of filing of the transcript in the court of civil appeals the appellant or plaintiff in error shall file with the clerk of the district court a copy of his brief, which shall be by the clerk deposited with the papers of the cause, with the date of filing indorsed thereon, and the clerk shall forthwith give notice to the appellee or defendant in error, or his attorney of record, of the filing of such brief, and that in twenty days after such notice the appellee or defendant in error shall file a copy of his brief with the clerk of said court below, and with the clerk of the court of civil appeals four copies.

Briefs filed in courts below and notice given. (Acts of 1892, S. S.)

Art. 1418. [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.

Case appealed, etc., to remain on docket till, etc.

Art. 1419. [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 on return of mandate.

Art. 1420. [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.

Proceedings in case of affirmation of judgment.

CHAPTER TWENTY.

COSTS AND SECURITY THEREFOR.

Article	Article
Who responsible for costs.....1421 Officers may demand payment of, to adjournment of each term.....1422 May put bill of costs with officer for collection, when; same has force of execution; appeal not to prevent execution for costs.....1423 Levy for costs; costs demanded of attorney; fees for collecting, when allowed.....1424 Successful party to recover.....1425 Taxes on law proceedings.....1426 Fees of only two witnesses to any fact.....1427 Costs of motions.....1428 Costs where exception sustained.....1429 Where exception overruled.....1430	Costs of several suits, etc.....1431 Where demand reduced by payment.....1432 In actions of assault and battery.....1433 Costs of new trials.....1434 Where judgment is arrested, etc.....1435 On appeals and certiorari.....1436 The same.....1437 Court may otherwise adjudge costs.....1438 Clerk may require security for costs.....1439 Who may require security.....1440 Judgment on cost bond.....1441 Affidavit of inability to give cost bond.....1442 No security to be required of who.....1443 No security required of the state.....1444 Security may be required of who, etc.....1445 Costs may be secured by other bonds.....1446

Article 1421. [1420] Each party to any suit shall be responsible to the officers of the court for the costs incurred by himself; and no sheriff or constable shall be compelled to execute any process in civil cases coming from any county other than the one in which he is an officer, unless the fees allowed him by law for the service of such process shall be paid in advance; provided, that when affidavit is filed, as provided for in article 1442 of this chapter, the clerk issuing the process shall indorse thereon the words "pauper oath filed," and sign his name officially below them, and the sheriff or constable in whose hands such process is placed for service shall serve the same as in other cases.

Each party responsible to officers for his own costs. (Acts of 1887, p. 102.)

Officers may demand payment of costs up to adjournment of each term.

(Acts of 1879, ch. 81, p. 90.)

May put bill of costs in hands of officer for collection, when.

Same to have force of execution.

Appeal not to prevent issuance of execution for costs.

Ib.

Officer to levy for costs, when.

Ib.

Costs demanded of attorney, when.

Fees for collecting costs, when allowed.

Ib.

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.

Costs where exception is sustained.

Ib. §§122, 123.
P. D. 1483, 12.

Where exception overruled.

Ib.

Costs of several suits, etc.

Ib. §49.
P. D. 1452.

Where demand reduced by payments, etc.

(Act Jan. 2, 1860, p. 5, §1.)
P. D. 3446.

Art. 1422. [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.

Art. 1423. [1420b] Should any party against whom costs have been taxed under the provisions of this chapter 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.

Art. 1424. [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 fee as are allowed for collecting money under other executions.

Art. 1425. [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. 1426. [1422] All taxes imposed on law proceedings shall be included in the bill of costs.

Art. 1427. [1423] There shall not be allowed in any cause the fees of more than two witnesses to any one fact.

Art. 1428. [1424] On all motions the court may give or refuse costs at its discretion, except where it is otherwise provided by law.

Art. 1429. [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. 1430. [1426] If such exception be overruled, all costs of such exception shall be taxed against the party taking the exception.

Art. 1431. [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. 1432. [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. 1433. [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. Costs in action of assault and battery, etc. (Act May 13, 1846, p. 363, §106.) P. D. 1467.
- Art. 1434. [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. Cost of new trials. Ib. §113. P. D. 1474.
- Art. 1435. [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. Where judgment is arrested, etc. Ib. §114. P. D. 1475.
- Art. 1436. [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. On appeal and certiorari. (Act Aug. 13, 1870, p. 87, §12.) P. D. 6349.
- Art. 1437. [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 cost of the court above. Same subject. Ib.
- Art. 1438. [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. Court may otherwise adjudge costs.
- Art. 1439. [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. Clerk may require security for costs. (Act March 20, 1848, p. 184, §23.) P. D. 3833.
- Art. 1440. [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. Defendant or any officer may require security. (Act March 16, 1848, p. 106, §1.)
- Art. 1441. [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. Judgment on cost bond. Ib. §2.
- Art. 1442. [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 the 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. Affidavit of inability to give. (Act May 13, 1846, p. 363, §8.) P. D. 1429. (Acts of 1873, ch. 81, p. 91.)

No security to be required of executors, etc. (Act March 16, 1848, p. 106, §4.) P. D. 1503.

No security required of state.

Security may be required of intervenors, etc.

Costs may be secured by other bonds, etc.

Art. 1443. [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.

Art. 1444. [1440] The state shall not in any case be required to give security for costs.

Art. 1445. [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.

Art. 1446. [1442] When 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.

Article	Article
Miscellaneous provisions.	
Process, requisites of.....	Persons to whom property delivered liable for debts.....
Subpoenas.....	Effect of discharge of receiver.....
No paper considered filed, unless.....	Property redelivered by receiver without sale still liable for debts; as to abatement.....
No mandamus on ex parte hearing.....	Preference liens over mortgage.....
Vouchers, wager of battle, repealed.....	Who liable in certain cases.....
New trials granted when damages too small.....	Receiver to give bond on appeal.....
Several counts, good and bad.....	Railroad funds, where deposited.....
Suits consolidated, when.....	Receiver may be sued, or sued without leave; effect of judgment against.....
Officers failing, etc., punished for contempt and liable for damages.....	Suits against receiver.....
Motions.	
Motion docket.....	Master in chancery, qualification, etc.....
Service of motion, how made.....	Inventory to be made and returned by receiver.....
Notice of motion in pending suits.....	Jurisdiction to appoint receiver in certain cases.....
Motions disposed of, when.....	Receiver of corporation, where applied for.....
Notice of motion not in pending suit.....	Where there are betterments general creditors have rights to be protected.....
Disposed of, when.....	Judgments and other claims have preference over mortgage.....
Deposit of money, etc., in court.	
Custody of money, etc., deposited.....	Receivership of corporations limited to three years.....
Officer shall deliver funds, etc., to his successor.....	Application for receiver, by whom.....
Not to exempt officer and his sureties from liability, etc.....	Rules of equity shall govern in receivership proceedings.....
Receivers.	
When receivers may be appointed.....	Appointment of auditors.
Who not qualified to act as receiver.....	Auditor appointed, when.....
Appointment of receiver, when void.....	Report to be verified by affidavit.....
Appointment of person disqualified ground of forfeiting charter.....	Shall be admitted in evidence.....
Oath and bond of receiver.....	Compensation of.....
Receiver's right to sue, etc.....	Substitution of lost records and papers.
Funds in hand of, how invested.....	Lost records and papers supplied.....
Application of funds in hands of receiver, and claim referred.....	Motion, requisites of.....
Proceedings in suits where receiver is discharged.....	If substitutes agreed to.....
When property in hands of receiver subject to execution.....	If not agreed to court may hear proof.....
Judgments first lien; same charged with lien after receivership.....	Adverse party may supply.....
	Parties may agree on brief statement.....
	Substituted copies constitute record.....

MISCELLANEOUS PROVISIONS.

Process, requisites of. (Const., art. 5, §12; acts Nov. 12, 1866, p. 199, §1; May 13, 1846, p. 363, §10.) P. D. 1431.

Article 1447. [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.

Art. 1448. [1444] Subpoenas 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.

Subpoenas.
Ib.

Art. 1449. [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. 1450. [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. 1451. [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. 1452. [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. 1453. [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. 1454. [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, the court in which the same are pending may, in its discretion, order such suits to be consolidated.

Suits consolidated, when.
Ib. §48.
P. D. 1451.

Art. 1455. [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.

Officers failing, etc., punished for contempt and liable for damages.
Ib. §20.
P. D. 1436.

MOTIONS.

Art. 1456. [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.

Motion docket.
Ib. §53.
P. D. 1453.

Art. 1457. [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 the 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.

Service of motion, how made.
(Act May 13, 1846, p. 363, §96.)
P. D. 1463.

Notice of motion in pending suits.

Art. 1458. [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 disposed of, when.

Art. 1459. [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.

Ib. §54.
P. D. 1454.
Notice of motion not in pending suit. (Act May 11, 1846, p. 200, §5.)
P. D. 1468.

Art. 1460. [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.

Disposed of, when. (Act May 13, 1846, p. 363, §55.)
P. D. 1455.

Art. 1461. [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.

DEPOSIT OF MONEY, ETC., IN COURT.

Custody of money and other articles deposited. (Act May 19, 1876, p. 7, §1.)

Art. 1462. [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 a 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 he has made of the same.

Officer shall deliver funds, etc., to his successor. Ib. §2.

Art. 1463. [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. 1464. [1460] The provisions of articles 1462 and 1463 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.

When receivers may be appointed. (Acts of 1887, p. 119.)

Art. 1465. Receivers may be appointed by any judge of a court of competent jurisdiction in this state, in the following cases:

1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff or any party whose right to or interest in the property or fund or the proceeds thereof is probable, and where it is shown that the property or fund is in danger of being lost, removed or materially injured.

2. In an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property when it appears that the mortgaged property is in danger of being lost, removed or materially injured, or that the condition of the mortgage has not been performed, and the property is probably insufficient to discharge the mortgage debt.

3. In cases where a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

4. In all other cases where receivers have heretofore been appointed by the usages of the court of equity.

Art. 1466. No party, attorney, or any person interested in any way in an action for the appointment of a receiver shall be appointed receiver therein, nor shall any person be appointed receiver in any case where the property lies within this state, unless the person appointed at the time of his appointment is a bona fide citizen of the state of Texas and qualified to vote, and during the pendency of said receivership the person or persons so appointed receiver shall keep and maintain actual residence within this state. And if in any action for the appointment of a receiver the property sought to be placed in the hands of a receiver is situated partly in this state and partly without, then no person shall be appointed receiver of that part of the property situated in this state unless such person at the time is a bona fide citizen of this state and qualified to vote, and during the pendency of said receivership the person or persons so appointed receiver shall keep and maintain actual residence within this state.

Who disqualified to act as receiver.
(Acts of 1889, p. 55.)

Art. 1467. If any person should be appointed receiver of property situated in this state, or a part of which is situated in this state and a part without, who is not at the time a bona fide citizen of this state and entitled to vote, all such appointments shall be absolutely null and void in so far as the property situated within this state is concerned.

When appointment void.
Ib.

Art. 1468. If any corporation owning property in this state and chartered by this state shall have a receiver of its property situated in this state appointed who is not at the time of appointment a bona fide citizen of this state and qualified to vote, said corporation shall thereby forfeit its charter, and it shall be the duty of the attorney-general to at once prosecute a suit by quo warranto against said corporation so offending to forfeit its charter, and the court trying the cause shall forfeit the charter of said corporation upon proof that a person has been appointed receiver of its property situated in this state who is not qualified to act under the provisions of this article.

Quo warranto to forfeit charter.
Ib.

Art. 1469. When a receiver is appointed he shall, before he enters upon his duties, be sworn to perform them faithfully, and shall execute a bond, with three or more good and sufficient sureties, to be approved by the court appointing him, in such sum as the court shall see proper to fix, conditioned that he will faithfully discharge all of the duties of receiver in the action [naming it] and obey the orders of the court therein.

Oath and bond of receiver.
(Acts of 1887, p. 120.)

Art. 1470. The receiver shall have power, under the control of the court, to bring and defend actions in his own name as receiver, to take charge and keep possession of the property, to receive rents, collect, compound for, compromise demands, make transfers, and generally to do such acts respecting the property as the court may authorize.

Receiver's power.
Ib.

Art. 1471. The funds in the hands of a receiver may be invested upon interest by order of the court, but no such order shall be made except upon consent of all the parties to the action.

Funds, how invested.
Ib.

Art. 1472. All moneys that come into the hands of a receiver as such receiver shall be applied as follows: First, to the payment of all court costs of the suit; second, to the payment of all wages of employes due by the receiver; third, to the payment of all debts due by the receiver for materials and supplies purchased during the

Application of funds in hand of receiver, and claims preferred.
(Acts of 1889, p. 55.)

receivership by the receiver for the improvement of the property in his hands as receiver; fourth, to the payment of all debts due for betterments and improvements done during the receivership to the property in his hands as such receiver; fifth, to the payment of all claims and accounts against the receiver on contracts made by the receiver during the receivership, and for all claims for stock and personal injury claims against said receiver accruing during said receivership, and all judgments rendered against said receiver for personal injuries and for stock killed; sixth, all judgments recovered against the person or persons or corporations in suits brought before the appointment of a receiver in the action. And said claims shall have a preference lien on all of the moneys coming into the hands of the receiver which are the earnings of the property in his hands, and the court shall see that the money coming into the hands of the receiver as earnings of the property in his hands is paid out on the claims against said receiver in the order of their preference as named above, and it shall be the duty of the receiver to pay the funds in his hands which are the earnings of the property while in his hands as receiver on the claims against him in the order of preference named above.

Proceedings in suits where receiver is discharged.
Ib.

Art. 1473. If a receiver is discharged pending suits against him for causes of action growing out of and arising during the receivership, the cause of action shall not abate, but may be prosecuted to final judgment against the receiver, and the plaintiff in the action may, if he sees proper, make the party or corporation to whom the receiver has delivered the property that was in his hands as receiver a party to the suit, and if judgment is finally rendered in favor of the plaintiff against the receiver, the court shall also enter up judgment in favor of the plaintiff against the party to whom the property was delivered by the receiver.

When property in the hands of receiver subject to execution.
Ib.

Art. 1474. If any person should sue a receiver and obtain judgment against such receiver, and said receiver shall have in possession moneys subject to the payment of such judgment, and the plaintiff owning the judgment shall apply to the court appointing the receiver for an order to pay said judgment, and if the court appointing the receiver should refuse to order said judgment paid, when there is money in the hands of said receiver subject to the payment of the judgment, then it shall be the duty of the court rendering the judgment to order an execution to issue on said judgment against said receiver upon the filing by the plaintiff in the court where the judgment was rendered an affidavit stating the facts that the plaintiff had applied to the court appointing the receiver for an order for said receiver to pay said judgment, and that it was proved to the court that there was money in the hands of the receiver at that time which was subject to the payment of the judgment, and that the court appointing the receiver refused to order the receiver to pay the judgment; said execution when so issued shall be levied upon any property in the hands of the receiver and shall be sold as under ordinary executions, and a sale of the property will convey the title of the same to the purchaser.

Judgments a first lien on property, and property charged with lien after receivership.
Ib.

Art. 1475. All judgments rendered against a receiver for causes of action arising during the receivership shall be a lien upon all of the property in the hands of the receiver superior to the mortgage lien; and if the property should be turned back into the possession of the party or corporation who were owning same at the time of the appointment of a receiver or any one else for them, or as their as-

signs or purchasers, the party or corporation so receiving said property from said receiver shall take said property charged with all of the unpaid liabilities of the receiver occurring during the receivership, to the value of the property delivered by the receiver.

Art. 1476. If a receiver is discharged by the court before all of the liabilities of the receiver arising during the receivership are settled in full, then the person, persons, or corporation to whom the receiver delivers the property that was in his hands as receiver shall be liable to the persons having claims against said receiver for the full amount of the liabilities.

Persons to whom property delivered liable for debts.
Ib.

Art. 1477. The discharge of a receiver shall not work an abatement of the suit against a receiver, nor shall it in any way affect the right of the party to sue the receiver if he sees proper.

Effect of discharge of receiver.
Ib.

Art. 1478. All parties and corporations whose property has been placed in the hands of a receiver by order of the court, and which was not sold by the receiver, and which property has been delivered back to the original parties or corporation without any sale of said property, shall be liable and held to pay all of the unpaid liabilities of the receiver in causes of action arising out of and during the receivership; and if there are any suits pending against the receiver at the date of discharge, on causes of action arising during the receivership, the plaintiff shall have the right to make the party or corporation to whom the receiver delivered the property which was in his hands as receiver a party defendant along with the receiver; and if any judgment is rendered against the receiver for causes of action arising out of and during the receivership, then the court shall also at the same time (if the party or corporation receiving back the property have been made parties defendant) render judgment in favor of the plaintiff against defendants for the amount so found for plaintiff and all costs, and plaintiff shall have the right to foreclose his lien on the property delivered back by said receiver to said party or corporation.

Property redelivered by receiver without sale still liable for debts; suits do not abate, but new party may be made.
Ib.

Art. 1479. If at the date of the discharge of the receiver there are any judgments or claims not sued on against a receiver arising during the receivership, and which judgments and claims not sued on are unpaid at the date of the discharge of said receiver, said unpaid judgments and unpaid claims not sued on shall be a preference lien on all of the property that was in the hands of the receiver superior to the mortgage lien, and the person or corporation to whom the receiver has delivered the property that was in his hands as receiver shall be liable for all unpaid judgments and unpaid claims not sued on to the value of the property that was delivered by the receiver to said person or corporation.

Judgments and unsued claims have preference lien over mortgage.
Ib.

Art. 1480. Any person having a claim against a receiver not sued on at the date of the discharge of the receiver, shall have the right to sue said receiver either alone or jointly with the person or corporation to whom the receiver delivered said property that was in his hands as such receiver; and if any judgment is rendered against said receiver, a judgment shall also be rendered against the person or corporation for the same amount that is rendered against the receiver, not to exceed the value of the property so received by said person or corporation.

Receiver and person to whom property is delivered both liable and may be sued for unpaid claim.
Ib.

Art. 1481. In any case in which any receiver is sued in any of the courts of this state, and such receiver desires to take an appeal from any judgment which may be rendered against him in any justice or county court, or to take an appeal or writ of error from any judgment which may be rendered against him in any district court, be-

Receiver to give bond on appeal.
Ib.

fore such appeal or writ of error shall be perfected or allowed such receiver shall enter into bond with two or more good and sufficient sureties, to be approved by the clerk of the court or justice of the peace, payable to the appellee or the defendant in error, in a sum at least double the amount of the judgment, interest, and cost, conditioned that such receiver shall prosecute his appeal or writ of error with effect; and in case the judgment of the court to which such appeal or writ of error be taken shall be against him, that he will perform its judgment, sentence, or decree, and pay all such damages and costs as said court may award against him. In the event that the judgment of the court to which such appeal or error is taken shall be against such receiver, judgment shall at the same time be entered against the sureties on his said bond, and execution thereon may issue against such sureties within twenty days after the rendition of such judgment.

Railroad funds, where deposited. (Acts of 1887, p. 122.)

Art. 1482. When a line of railroad operated by a receiver lies wholly within this state, all money which comes into the hands of the receiver, whether from operating the road or otherwise, shall be kept and deposited in such place within this state as the court may direct, until properly disbursed; but if any portion of the road lies in another state the receiver shall be required to deposit in this state at least such share of the funds in his hands as is proportioned to the value of the property of the company within this state.

Receiver may sue, or be sued without leave; effect of judgment against. Ib.

Art. 1483. When any property of any kind within the limits of this state has been placed, by order of court, in the hands of a receiver, who has taken charge of such property, such receiver may, in his official capacity, sue or be sued in any court of this state having jurisdiction of the cause of action, without first having obtained leave of the court appointing such receiver to bring said suit, and if a judgment is recovered against said receiver it shall be the duty of the court to order said judgment paid out of any funds in the hands of said receiver as such receiver.

Suits against receiver, where brought. Ib.

Art. 1484. Actions may be brought against the receiver of the property of any person where said person resides. Actions may be brought against receivers of a corporation in the county where the principal office of said corporation may be located, and against receivers of railroad companies in any county through or into which the road is constructed, and service of summons may be had upon the receiver, or upon the general or division superintendent of the road, or upon any agent of said receiver who resides in the county in which the suit is brought.

Master in chancery, qualification, duties and appointments. Ib.

Art. 1485. The court shall, in every case of the appointment of receiver, also after his disqualifying, appoint a master in chancery, who shall be a citizen of this state, and not an attorney for either party to the action, nor related to either party, who shall perform all of the duties required of him by the court, and shall be under orders of the court, and have such power as a master of chancery has in a court of equity.

Inventory to be made and returned by receiver. Ib.

Art. 1486. The receiver, as soon after his appointment as possible, shall return to the court appointing him a true and correct inventory of all property received by him as such receiver.

Jurisdiction to appoint receiver confined to courts of this state in certain cases. Ib.

Art. 1487. When a person resides in this state and a receiver is applied for, or if the property sought to be placed in the hands of a receiver is situated within the limits of this state, no court other than one within the limits of this state shall have power to appoint any receiver of said property.

Art. 1488. If the property sought to be placed in the hands of a receiver is a corporation whose property lies within this state, or partly within this state, then the action to have a receiver appointed shall be brought in this state in the county where the principal office of said corporation is located.

Receiver of corporation, where applied for.
Ib.

Art. 1489. When a receiver of a corporation has, under the order of the court, made improvements upon the property of said corporation, and has also, under the order of the court appointing him, purchased rolling stock, machinery, and made other improvements whereby the value of the property of said corporation has been increased, or has extended such road, or acquired any property in connection with said road, and has paid for same out of the current receipts of the corporation that came into his hands as receiver, then, if there be any floating debts against said corporation, said corporation shall be made to contribute to the floating indebtedness to the full value of the money so spent by said receiver as aforesaid; and if there are any liens of any kind upon the property of said corporation in the hands of such receiver, and said property is sold under the order of the court, and said liens foreclosed, then it shall be and is hereby made the duty of the court appointing such receiver, if there be any unpaid debts or judgments, or claims against the corporation itself, to detain in the hands of the clerk of the court money to the full value of the improvements made by said receiver of said property out of the proceeds of the sale of the property sold, and pay the same over to any person or persons who has or may have a claim, debt, or judgment against said corporation; and the court in ordering the sale of the property shall require sufficient cash money to be paid in at date of sale to cover the full value of the improvements so made by said receiver out of the current funds received by him from the property while receiver.

Where there are betterments, general creditors have rights to be protected.
Ib.

Art. 1490. All judgments, claims, or causes of action when determined, existing against any corporation at the time of the appointment of a receiver, shall be paid out of the earnings of such corporation while in the hands of the receiver, to the exclusion of mortgage action; and the same shall be a lien on such earnings.

Judgments and other claims have preference over mortgage.
Ib.

Art. 1491. No corporation shall be administered in any court for a longer period than three years from the date of such appointment; and within three years such court shall wind up the affairs of such corporation, unless prevented by appeal of litigation.

Receivership of corporations limited to three years.
Ib.

Art. 1492. No receiver shall ever be appointed of any joint stock, incorporated company, or of any copartnership or private person, on the petition of such joint stock, incorporated company, partnership or person; provided, that any stockholder or stockholders of such joint stock or incorporated company may have his or their action against such company, and may have a receiver appointed as in ordinary cases; and provided further, that nothing herein shall prevent a member of any copartnership from having a receiver appointed whenever a cause of action arises between the copartners.

Application for receiver, by whom made.
Ib.

Art. 1493. 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 chapter and the general laws of the state.

Rules of equity shall govern in receivership proceedings.
Ib.

APPOINTMENT OF AUDITORS.

Art. 1494. [1471] Whenever in any suit it shall appear that an investigation of accounts or examination of vouchers is necessary for

Auditor appointed, when.
P. D. 3760.

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.

Report to be verified by affidavit.

Art. 1495. [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.

Shall be admitted in evidence, but, etc.
Ib.

Art. 1496. [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.

Compensation of.

Art. 1497. [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.

SUBSTITUTION OF LOST RECORDS AND PAPERS.

Lost records and papers supplied, on motion.
(Act Feb. 11, 1850, p. 160, §1.)
P. D. 4969.

Art. 1498. [1475] Whenever the records 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.

Motion, requisites of.
Ib. §2.
P. D. 4970.

Art. 1499. [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. 1500. [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. 1501. [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. 1502. [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. 1503. [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. 1504. [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.

CHAPTER TWENTY-TWO.

SUITS AGAINST NON-RESIDENTS.

Article Actions against non-residents.....1504a Actual possession not necessary.....1504b Requisites of pleadings.....1504c	Article Judgment by default cannot be rendered1504d Procedure if suit be to extinguish lien.1504e Judgment receivable in evidence.....1504f
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Article 1504a. An action may be brought and prosecuted to final decree, judgment, or order, by any person claiming a right or interest in or to any property in this state, against any person or persons who are non-residents of this state, or whose place of residence is unknown, or who are transient persons, who claim an adverse estate, or interest in, or who claim any lien or incumbrance on said property, for the purpose of determining such estate, interest, lien, or incumbrance, and granting the title to said property, or settling the lien or incumbrance thereon.

Actions maintainable against non-residents. (Acts of 1893, p. 77.)

Art. 1504b. Such action may be maintained by any such person whether he is in actual possession of such property or not, and service on the defendant or defendants may be made by publication of the writ or notice of the same, as is now or hereafter may be provided by law for publication of citation against non-residents, persons unknown, or transient persons.

Actual possession not necessary; service, etc. Ib.

Art. 1504c. The pleadings in such case shall set forth the title of the complainant, as well as the claim of the defendant, if known, and such proceedings shall be had in such action as may be necessary to fully settle and determine the question of right or title in and to said property between the parties to said suit, and to decree the title or right of the party entitled thereto; and the court may issue the appropriate order to carry such decree, judgment, or order, into effect.

Requisites of pleadings. Ib.

Art. 1504d. No judgment by default shall be taken in such case by reason of the failure of the defendant to answer, but the facts entitling the plaintiff to judgment shall be exhibited to the court on the trial, and a statement of the facts shall be filed as may be provided by law in suits against non-residents of this state where no appearance has been made by them.

Judgment by default can not be rendered. Ib.

Art. 1504e. In case said suit shall be for the extinguishment of any lien or claim for money on said property that may be held by the defendant, the amount thereof, with interest, shall be ascertained by the court, and the same shall be deposited in the registry of the court, subject to be drawn by the defendant or defendants entitled thereto; but in such case no decree shall be entered until said sum is deposited, which fact shall be noted in said decree.

Procedure if suit be to extinguish lien. Ib.

Art. 1504f. The judgment of the court, in the cases mentioned, shall be received in evidence, under the rules governing evidence that may be established by law, and said judgment shall be binding on the parties thereto concerning the matters determined therein.

Judgment in such cases receivable in evidence. Ib.

TITLE XXXI.

Criminal District Courts.

CHAPTER ONE.

GALVESTON AND HARRIS CRIMINAL DISTRICT COURT.
THE JUDGE.

	Article		Article
Judge shall be appointed.....	1505	Shall reside in his district.....	1508
His term of office.....	1506	May be removed from office, how.....	1509
Shall possess certain qualifications.....	1507	Exchange, etc., with district judge.....	1510

Judge shall be appointed.
(Act July 23, 1870, p. 47, §6.)
P. D. 6140.

Article 1505. [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.

His term of office.
Ib.
(Const., art. 16, §30.)

Art. 1506. [1483] Said judge shall hold his office for the term of two years and until his successor is qualified.

Shall possess certain qualifications.
(Const., art. 5, §7.)

Art. 1507. [1484] No person shall be appointed judge of said court who does not possess the following qualifications:

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.

Shall reside in his district.
Ib.

Art. 1508. [1485] Said judge shall reside in his district during his term of office.

May be removed from office, how.
(Act July 23, 1870, p. 37, §8.)
P. D. 6142.

Art. 1509. [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 exchange or alternate with any district judge.
(Act May 18, 1871, p. 94, §2.)
P. D. 6149.

Art. 1510. [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.

CHAPTER TWO.

THE CLERK.

Article	Article
Governor shall appoint clerks.....1511	Duties and powers of clerks.....1515
Clerk shall give bond.....1512	Fees of clerks.....1516
Shall take oath of office.....1513	Salary of clerks.....1517
Bond and oath shall be recorded.....1514	Vacancy in office of clerk, how filled.....1518

Article 1511. [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, or until his successor is qualified. Governor shall appoint clerks, etc. (Act July 23, 1870, p. 37, §9.) P. D. 6143.

Art. 1512. [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. lb.

Art. 1513. [1490] The said clerk shall also take and subscribe the oath of office prescribed by the constitution of the state. Shall take oath of office. lb.

Art. 1514. [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. Bond and oath shall be recorded. lb.

Art. 1515. [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. Duties and powers of clerks. lb.

Art. 1516. [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. Fees of clerks. lb.

Art. 1517. [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. Salary of clerks. lb.

Art. 1518. [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. Vacancy in office of clerk, how filled. lb.

CHAPTER THREE.

JURISDICTION OF THE CRIMINAL DISTRICT COURT.

Article	Article
Original jurisdiction.....1519	Jurisdiction over cases transferred.....1522
Appellate jurisdiction.....1520	Jurisdiction over bail bond, etc.....1523
May grant habeas corpus, etc.....1521	

Article 1519. [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. Original jurisdiction. (Const., art. 5, §§1, 16.) (Act July 23, 1870.) P. D. 6135.

Appellate jurisdiction. (Const., art. 5, §16.) (Act May 18, 1871, p. 94, §3.)

Art. 1520. [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. 1521. [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. 1522. [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. 1523. [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.....	1524	Procedure	1528
Terms of the court.....	1525	Sheriffs shall attend.....	1529
Practice, pleading and evidence.....	1526	Same power as district court.....	1530
Selection, etc., of juries.....	1527	Appeals from.....	1531

Seal of the court and its use. (Act July 23, 1870, p. 37, §3.) P. D. 6137.

Article 1524. [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.

Terms of the court. Ib. §4. P. D. 6138.

Art. 1525. [1502] Said judge shall hold a term of said court in the city of Galveston, county of Galveston, on the first Monday in the months of January, March, May, July and November, and in the city of Houston, county of Harris, on the first Monday 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.

Rules of practice, pleading and evidence. Ib. §5. P. D. 6139.

Art. 1526. [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.

Selection, etc., of juries. Ib. §11. P. D. 6245.

Art. 1527. [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.

Procedure. Art. 1528. [1505] All the rules of criminal procedure governing the district court shall apply to and govern said criminal district court.

Art. 1529. [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. 1530. [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. 1531. [1508] Appeals and writs of error may be prosecuted from said criminal district court to court of criminal appeals, in the same manner and form as from the district court in like cases. Appeals from.

CHAPTER FIVE.

DALLAS CRIMINAL DISTRICT COURT.

	Article		Article
Court created; jurisdiction.....	1531a	Sheriff, clerk and county attorney to serve	1531e
Jurisdiction as to pending cases ad-justed	1531b	Terms of court and grand juries.....	1531f
Judge; qualifications, election, etc.....	1531c	Practice in	1531g
Seal of court and its uses.....	1531d		

Article 1531a. There is hereby created and established at the city of Dallas a criminal district court, which shall have and exercise all the criminal jurisdiction now vested in and exercised by the district courts of Dallas county. All appeals from the judgments of said court shall be to the court of criminal appeals, under the same regulations as are now or may hereafter be provided by law for appeals in criminal cases from district courts. Dallas criminal district court created; jurisdiction. (Acts of 1893, p. 118.)

Art. 1531b. From and after the time when this law shall take effect the district courts of Dallas county shall cease to have and exercise any criminal jurisdiction; provided, however, that if there shall be any criminal case upon trial in either of the district courts of Dallas county when this law shall go into effect, such district court shall retain jurisdiction of such cases until such trial shall be concluded, and until appeal therein shall be perfected, if an appeal shall be taken therein; and provided further, that nothing in this law shall effect the jurisdiction of the district courts of Dallas county to pronounce sentence in any criminal cases heretofore tried in such courts, or which shall be on trial when this law goes into effect. Jurisdiction as to pending cases adjusted. Ib.

Art. 1531c. The judge of said criminal district court shall be elected by the qualified voters of Dallas county for a term of four years, and shall hold his office until his successor shall have been elected and qualified. He shall possess the same qualifications as are required of a judge of the district court, and shall receive the same salary as is now or may hereafter be paid to the district judges, to be paid in like manner. He shall have and exercise all the powers and duties now or hereafter to be vested in and exercised by district judges in criminal cases. The judge of said court may exchange with any district judge, as provided by law in cases of district judges, and in case of disqualification or absence of the judge, a special judge may be selected, elected, or appointed, as provided by law in cases of district judges; provided, that the governor, by and with the consent of the senate, shall appoint a judge of said court, who shall hold the office until the next general election after Judge; qualifications, election, etc. Ib.

the passage of this law, and until his successor shall have been elected and qualified.

Seal of the court and its use. Ib.

Art. 1531d. Said court shall have a seal of like design as the seal now provided by law for district courts, except that the words "Criminal District Court of Dallas County" shall be engraved around the margin thereof, which seal shall be used for all the purposes for which the seals of the district courts are required to be used; and certified copies of the orders, proceedings, judgments, and other official acts of said court, under the hand of the clerk, and attested by the seal of said court, shall be admissible in evidence in all the courts of this state in like manner as similar certified copies from courts of record are now or may hereafter be admissible.

Sheriff, clerk and county attorney to serve, etc. Ib.

Art. 1531e. The sheriff, the county attorney, and the clerk of the district court of Dallas county, as heretofore provided for by law, shall be the sheriff, county attorney, and clerk, respectively, of said criminal district court, under the same rules and regulations as are now or may hereafter be prescribed by law for the government of sheriffs, county attorneys, and clerks in the district courts of the state; and said sheriff, county attorney, and clerk shall respectively receive such fees as are now or may hereafter be prescribed by law for such officers in the district courts of the state, to be paid in the same manner.

Terms of the court and grand juries. Ib.

Art. 1531f. Said court shall hold four terms each year for the trial of causes and the disposition of business coming before it, one term beginning the first Monday of January, one term beginning the first Monday of April, one term beginning the first Monday of July, and one term beginning the first Monday of October. A grand jury shall be empanelled in said court for each term thereof, and jury commissioners shall be appointed for drawing jurors for said court, as is now or may hereafter be required by law in district courts, and under like rules and regulations.

Practice in.

Art. 1531g. The trials and proceedings in said court shall be conducted according to the laws governing the pleadings, practice, and proceedings in criminal cases in the district courts.

CHAPTER SIX.

TEXARKANA CIVIL AND CRIMINAL COURT.

	Article
Court established.....	1531h
Jurisdiction defined.....	1531i
Territorial jurisdiction.....	1531j
District judge to preside.....	1531k
District clerk to serve; duties; seal.....	1531l
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	Article
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Criminal appeals.....	1531bb
Certiorari, appeals, etc., from inferior courts.....	1531cc
Expenses; how paid.....	1531dd
Transfer of cases.....	1531ee
Jurisdiction conformed; repealing clause.....	1531ff

Texarkana civil and criminal court established. (Acts of 1895, p. 10.)

Article 1531h. There is hereby established and created a court to be held in the city of Texarkana, in Bowie county, Texas, which is hereby styled "Texarkana civil and criminal court."

Art. 1531i. Within that portion of the territory of Bowie county described in article 1531j, the "Texarkana civil and criminal court" shall have and exercise all the jurisdiction, power and authority in both civil and criminal cases which is now or may hereafter be vested by the constitution and the laws of this state in the district courts of this state, except such jurisdiction, power and authority as are specially withheld from said court by this chapter, and said court shall also have original jurisdiction of all suits, complaints and pleas whatever, without regard to any distinction between law and equity, as well as of all proceedings under distress warrants issued by justices of the peace when the amount in controversy shall exceed in value two hundred dollars exclusive of interest; but said court shall have no jurisdiction in probate matters, and the jurisdiction of the county court of Bowie county as a probate court, and the jurisdiction of the district court of said county in probate matters shall not in any manner be affected, altered or changed by this chapter. Said Texarkana civil and criminal court shall also have exclusive original jurisdiction of all the criminal cases, both felonies and misdemeanors, where the offense is committed in that portion of Bowie county described in article 1531j, and over which justices of the peace and mayors' or recorders' courts have not jurisdiction under the laws of this state, and shall have appellate jurisdiction of all cases, both civil and criminal, over which justices of the peace and mayors' and recorders' courts of cities and towns have original jurisdiction, and in which cases appeals are now or may hereafter be by law allowed to be prosecuted to the county court.

Jurisdiction
defined.
Ib.

Art. 1531j. The court established by this chapter shall be held for and its jurisdiction shall extend over and be confined to the following described territory: All that portion of Bowie county, Texas, lying east of the following line: Beginning at a point on the south bank of Red river, same being the southeast corner of a survey in the name of C. M. Collum, as shown by a map of Bowie county; then westerly to the northeast corner of the L. Peters survey, as shown by said map; thence south with said L. Peters' east boundary line and the extension thereof produced to the north bank of Sulphur Fork of Red river.

Territorial
jurisdiction.
Ib.

Art. 1531k. The district judge of the judicial district in which Bowie county is or may hereafter be situated shall be ex officio judge of the "Texarkana civil and criminal court," and shall hold and preside over the same.

District judge
to preside.
Ib.

Art. 1531l. The clerk of the district court of Bowie county shall be ex officio clerk of the court established by this chapter, and shall keep an office in the building where said court is held, from which building the process of said court shall issue; and said clerk shall have the custody of all minutes, records, books, papers, and seal of said court, and shall keep the same in said office; and when he does not reside in Texarkana, he shall have a deputy or deputies residing there. He shall be provided with a seal having engraved thereon a star of five points in the center, and the words "Texarkana civil and criminal court, Bowie county, Texas," the impress of which seal shall be attached to all process, except subpoenas, issued out of said court, and shall be used to authenticate his official acts as such clerk. He shall provide and keep for said court such dockets, minute books, and record books of all kinds, and keep such records and minutes of the proceedings of said court as are required by law to be kept of and for the district courts of this state, and perform such duties as district clerks perform.

District clerk
to serve; his
duties; seal,
etc.
Ib.

Sheriff; his duties, etc.
Ib.

Art. 1531m. It shall be the duty of the sheriff of Bowie county to attend upon said court, and to execute its process either in person or by deputy, and when he does not reside in Texarkana, he shall keep one or more deputies residing there.

District and county attorney to serve.
Ib.

Art. 1531n. The district attorney of the judicial district in which Bowie county is or may be hereafter situated shall be *ex officio* attorney for the state in the court established by this chapter, and it shall be his duty to represent the state in all cases in said court to which the state is a party, except in such criminal cases as may be in said court on appeal from justices' courts, and on presentment by information filed by the county attorney of Bowie county, in which cases the county attorney of said county shall represent the state. All the provisions of the law regulating the respective duties, powers and privileges of district and county attorneys in the district and county courts of this state shall apply in this court, when not in conflict with the provisions of this chapter.

Fees.
Ib.

Art. 1531o. The clerk of the court established by this chapter, and all other officers attending upon it, or executing its process, and the attorney representing the state therein, shall receive and be paid the same fees and in the same manner as such officers are or may hereafter be paid for like services in the district and county courts of this state.

General rules of practice applicable.
Ib.

Art. 1531p. The rules adopted and which may be hereafter adopted by the supreme court of the state of Texas for the district and county courts shall govern this court, and the proceedings in this court shall conform to the rules and practices governing district courts, and all provision of the laws of this state governing district courts and providing for special judges by agreement, and also providing for the election or appointment of special judges for the same, shall apply to and govern this court, as far as applicable, and when not otherwise provided herein.

Terms of court.
Ib.

Art. 1531q. The district judge presiding over the court established by this chapter shall hold at least two regular terms of said court in each year, one term to be begun and holden on the sixth Monday after the fourth Monday in August in each year, and may continue in session for three weeks, and the other term to be begun and holden on the sixth Monday after the first Monday in February of each year, and may continue in session for three weeks, and he shall hold such special terms as may be authorized in accordance with the law governing special terms of the district courts.

Venue of suits and prosecutions.
Ib.

Art. 1531r. No inhabitant of that portion of Bowie county described in article 1531j shall be sued in the district court of Bowie county nor in the county court of said county in any action over which the court established by this chapter has jurisdiction, except in such cases as he might be sued in such courts as if he were an inhabitant of any other county than Bowie, or state than Texas, nor shall any person be presented or indicted therein for any offense committed in said county of Bowie within the territory or district described in article 1531j.

Power to issue writs and process.
Ib.

Art. 1531s. The court established by this chapter shall have power to issue all writs and process as may issue by the district courts of this state.

Jury commissioners; their qualifications.
Ib.

Art. 1531t. The judge of the court established by this chapter 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 residing in that portion of Bowie county described in article 1531j, and be able to read and write.

2. They shall be freeholders in Bowie county, and qualified jurors in the court established by this chapter.

3. They shall have no suit in the court established by this chapter which requires the intervention of a jury.

Art. 1531u. All provisions of the laws of this state relating to the appointment, organization, privileges, powers, duties and compensation of jury commissioners for the district courts of this state shall apply to and govern the appointment, organization, privileges, powers, duties and compensation of the jury commissioners of the court established by this chapter, as far as practicable, and when not otherwise provided herein.

General laws governing jury commissioners, applicable.
Ib.

Art. 1531v. The grand and petit jurors for the court established by this chapter shall reside in that portion of Bowie county described in article 1531j, and shall possess the qualifications prescribed by law for grand and petit jurors for the district courts, and all provisions of the laws of this state relating to the selection, exemption, organization, empaneling, privileges, powers, duties and compensation of grand and petit juries in any manner, shall apply to and govern the selection, organization, empaneling, privileges, powers and duties, compensation and exemption of the grand and petit juries of the court established by this chapter, as far as applicable, and when not otherwise provided herein.

Grand and petit jurors.
jurors.
Ib.

Art. 1531w. No inhabitant residing in that portion of Bowie county described in article 1531j shall ever be required to render jury service in the district court of Bowie county, nor in the county court of said county, except in the trial of causes in said court in probate matters, nor in any court of said county held outside of the district prescribed in article 1531j.

Exemption from certain jury service.
Ib.

Art. 1531x. All the provisions of the law in reference to the change of venue in civil and criminal cases in the district courts of this state shall apply to and govern in the change of venue in cases pending in the court established by this chapter, except when the application for a change of venue shows that the cause for change of venue exists only in that portion of Bowie county described in article 1531j; then should the venue be changed, it shall be changed to the district court or county court of Bowie county, whichever has jurisdiction of said case.

General rules as to change of venue to apply, except, etc.
Ib.

Art. 1531y. All suits for the trial of titles to land, and for the enforcement of liens thereon, whenever the land shall be situated within the territory described in article 1531j, shall be brought in the court established by this chapter.

Venue in trespass to try title, and to enforce lien on land, etc.
Ib.

Art. 1531z. In suits for divorce, whenever the plaintiff resides within the territory described in article 1531j, and has resided in Bowie county for the time required by law, the same may be brought in the court established by this chapter.

Venue in suits for divorce.
Ib.

Art. 1531aa. In civil cases appeals and writs of error shall lie from the court established in this chapter to the court of civil appeals of the supreme judicial district in which Bowie county is now or may hereafter be situated, under the same law, rules, regulations and procedures as govern appeals and writs of error from the district and county courts of this state.

Civil appeals and writs of error.
Ib.

Art. 1531bb. In criminal cases of the grade of felony, appeals shall lie from the court established in this chapter to the court of

Criminal appeals.
Ib.

criminal appeals, under the same laws, rules, regulations and procedure governing appeals in such cases from the district court, and in all criminal cases below the grade of felony, appeals shall lie from the court herein established to the said court of criminal appeals, under the same laws, rules, regulations and procedure as govern appeals from the county courts.

Certiorari and appeals and writs of error from inferior courts.

Art. 1531cc. Appeals and writs of certiorari shall be to the court established by this chapter from all courts of justices of the peace, mayors' and recorders' courts of cities and towns held within the territory described in article 1531j under the laws, rules, regulations and procedure governing such appeals and writs of certiorari to county courts, as far as applicable.

Expenses payable out of the treasury of Bowie county, except, etc.
Ib.

Art. 1531dd. The expenses of the court established by this chapter shall be paid out of the treasury of Bowie county as are paid the expenses of the district court of said county; provided, that said county shall not be required to build or erect a court house or jail for the use of said court, nor provide or pay rent for such place, and the court hereby created shall be organized and held in the city hall of the city of Texarkana, in Bowie county, Texas, and said city hall shall become and be the court house for all legal purposes within the territory described in article 1531j.

Transfer of cases.
Ib.

Art. 1531ee. All cases, both civil and criminal, over which the court established by this chapter has jurisdiction, that may be pending in the district and county courts of Bowie county when this chapter takes effect, may be transferred from said courts to this court by agreement of the parties thereto in writing, signed by them in person or by attorney, and filed among the papers of the case; upon the filing of which agreement the court in which said case is pending shall, either in term or vacation, enter an order on the minutes thereof transferring said case to the court established by this chapter. In criminal cases the written agreement to transfer shall be signed by the defendant in person, and by the attorney representing the state. When the order of transfer has been made as herein provided, the clerk of the court making such order shall immediately make a certified copy of such order, and all other orders theretofore made in such case, and transmit all the papers in such case, including the written agreement and certified copy or copies of said order or orders, to the court established by this chapter, and the clerk of such court shall immediately docket and number the same on the proper docket of the court established by this chapter.

Jurisdictions conformed; repealing clause.
Ib.

Art. 1531ff. The jurisdiction of the district and county courts of Bowie county, Texas, shall be and the same is hereby conformed to the changes made by this chapter, and all laws and parts of laws in conflict with this chapter are hereby repealed.

TITLE XXXII.

Courts—Commissioners'.

CHAPTER ONE.

ORGANIZATION.

Election and term of office of county commissioner1532 Court composed of whom and the presiding officer thereof.....1533	Article Article	Three members constitute a quorum, except, etc.....1534 Oath and bond of county commissioner.....1535 Vacancy in office of county commissioner, how filled.....1536
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Article 1532. [1509] 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 elected.

Election and term of office of county commissioners. (Const., art. 5. §18.) (Act July 22, 1876, p. 51, §3.)

Art. 1533. [1510] 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.

Court composed of whom and the presiding officer thereof. (Const., art. 5 §18.) (Act July 22, 1876, p. 51, §2.)

Art. 1534. [1511] 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.

Three members constitute a quorum, except, etc. Ib, §12.

Art. 1535. [1512] 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, and each commissioner shall execute a bond, with two or more good and sufficient sureties, to be approved by the judge of the county court of his county, in the sum of three thousand dollars, payable to the treasurer of his county, conditioned for the faithful performance of the duties of his office.

Oath and bond of county commissioners. (Act of 1887, p. 53.)

Art. 1536. [1513] 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.

Vacancy in office of commissioner, how filled. Ib. §18.

CHAPTER TWO.

POWERS AND DUTIES.

Article	Article
Certain powers of the court specified.....1537	May co-operate with cities and towns in sanitary regulations1547
Power to levy tax1538	May construct bridges in corporate limits1547a
Certain tax shall not exceed, etc.....1539	May co-operate with cities in such construction1547b
Tax shall not be levied, except, etc.....1540	May issue bonds for such bridge purposes1547c
Power to fill certain vacancies.....1541	May provide building, etc., for county court1548
How vacancies shall be filled.....1542	Other powers, etc., of the court.....1549
Shall send indigent sick to hospital, when1543	Duty as to school lands.....1550
Commissioners' court may designate health districts of incorporated towns.1544	Shall provide seals for district and county court1551
Proceedings after health district designated1545	
Failure to comply with notice provided for in the foregoing article unlawful.1546	

Certain powers of the court specified. (Const., art. 5, §18.) (Act July 22, 1876, p. 51, §§4, 9, 10.)

(Acts of 1885, p. 89.)

Article 1537. [1514] The said courts shall have power and it shall be their duty—

1. To lay off their respective counties into precincts, not less than four, 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; also shall establish justices' precincts and justices' courts for unorganized counties as provided by law.

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 can not 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.

Power to levy tax. (Const., art. 8, §9.) (Amendment 1889.)

Art. 1538. Said court shall have power to levy and collect a tax for county purposes not to exceed twenty-five cents on the one hundred dollars valuation, and not to exceed fifteen cents for roads and bridges on the one hundred dollars valuation, except for the payment of debts incurred prior to the adoption of the amendment to the constitution September 25, A. D. 1883; and for the erection of public buildings, streets, sewers, waterworks and other permanent improvements, not to exceed twenty-five cents on the one hundred dollars valuation in any one year, and except as is in the constitu-

tion otherwise provided; provided, however, the court may levy an additional tax for road purposes not to exceed fifteen cents on the one hundred dollars valuation of the property subject to taxation under the limitations and in the manner provided therefor in article 8, section 9, of the constitution, and in pursuance of the laws relating thereto.

Art. 1539. [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.

Art. 1540. [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.

Art. 1541. [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.

Power to fill certain vacancies.

Art. 1542. [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.

How vacancy shall be filled, etc.

Art. 1543. [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 exists in the county, the indigent patient shall have the right to select which one of them he shall be sent to.

Shall send indigent sick to hospital, when.
Ib. §21.

Art. 1544. The commissioners' court of any county in which an incorporated town or village may be situated, shall have power to designate the lines of such town or village, and may appoint a board of health for such town, consisting of three persons, not less than two of whom shall be regular practicing physicians; said court when such appointments are made shall immediately notify the state health officer, and said board shall be under the direction of the state health officers.

Commissioners' court may designate health districts of unincorporated towns.
(Acts of 1889, p. 139.)

Art. 1545. After the appointment provided for in the foregoing article said board shall elect one of their number as presiding officer, and it shall be the duty of such presiding officer, if the premises of any citizen residing within the prescribed limits of said town or village are in an unclean or unhealthy condition, to notify him of the fact, and that he must proceed at once to clean the same.

Proceedings after health districts designated.
Ib.

Art. 1546. Any person living in the prescribed limits of said town or village, having received the notice provided for in the foregoing article and failing to comply therewith, shall be deemed guilty of a misdemeanor and punished as provided for in the penal code.

Failure to comply with notice provided for in preceding article unlawful.
Ib.

Art. 1547. The municipal authorities of towns and cities and commissioners' courts of the counties wherein such towns and cities are situated, may co-operate with each other in making such improvements connected with said towns, cities and counties as may be deemed by said authorities and courts necessary to improve the public health and to promote efficient sanitary regulations; and, by mutual arrangement, they may provide for the construction of said improvements and the payment therefor.

May co-operate with cities and towns in sanitary regulations.
(Acts of 1879, p. 9.)

Art. 1547a. Whenever the commissioners' court of any county shall deem it to the interest of the county to erect any bridge or

May construct bridges in corporate limits.
(Acts of 1895, p. 164.)

bridges within the corporate limits of any city or town, said court may make contracts therefor, and erect said bridges to the same extent and under the same conditions now prescribed by law for the construction of bridges outside of the limits of any city or town.

May co-operate with cities in such construction. *Ib.*

Art. 1547b. If said commissioners' court and the city council of any city or town desire to co-operate in the erection of a bridge within the corporate limits of any city or town, they may jointly erect such bridge upon such terms and conditions as may be mutually agreed upon; and either or both of the city and county may issue its bonds to pay for its proportional part of the debt; provided, that no such contract shall be made or entered into or bonds issued under the provisions of this law unless a proposition therefor shall be submitted to the property tax paying voters of the county at an election to be held by virtue of an order of the commissioners' court for the purpose, and a majority of such voters shall vote at such election in favor of such proposition; and the same laws governing other elections shall govern said election, canvass and return, and the county judge of said county shall declare by proclamation the result thereof by publication in some newspaper in said county.

May issue bonds for such bridge purposes. *Ib.*

Art. 1547c. And for the purposes herein mentioned, counties in this state may execute and issue its bonds, in the manner, under the conditions and to the same extent as they are now or may be hereafter authorized to issue for the erection of bridges outside of the corporate limits of cities and towns.

May provide building, etc., for county court. (Act Aug. 19, 1876, p. 211.) Other powers, etc., of the court.

Art. 1548. [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.

Art. 1549. [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. 1550. [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.

Shall provide seals for the district and county courts.

Art. 1551. [1524] Said court shall provide the seals required by law for the district and county courts of their respective counties.

CHAPTER THREE.

TERMS AND MINUTES OF THE COURT.

	Article		Article
Regular terms of the court.....	1552	Minutes of the court.....	1554
Special terms of the court.....	1553	Minutes of proceedings in vacation....	1555

Regular terms of the court. (Act July 22, 1876, p. 53, §13.)

Article 1552. [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. 1553. [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. 1554. [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. 1555. [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.
Ib.

CHAPTER FOUR.

MISCELLANEOUS PROVISIONS.

Seal of the court.....	Article 1556	Clerk shall issue process.....	Article 1558
The clerk of the court and his duties..	1557	Process shall be executed, when, etc..	1559

Article 1556. [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 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. 1557. [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.
Ib. §8.

Art. 1558. [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.
Ib. §9.

Art. 1559. [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.
Ib. §9.

TITLE XXXIII.

Courts—Justices'.

CHAPTER ONE.

ELECTION AND QUALIFICATION OF JUSTICES.

	Article		Article
Justices, election, bond and term of office	1560	Two justices in certain precincts.....	1563
Appointed, how, in unorganized counties	1561	Commission and qualification.....	1564
Additional justices of the peace for unorganized counties	1562	Vacancy, how filled	1565
		Nearest justice to hold court, when.....	1566
		Justice disqualified, when.....	1567

Justices, election, bond and term of office. (Acts of 1885, p. 90.)

Article 1560. [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. He shall enter into bond, payable to the county judge and his successors in office, in the sum of one thousand dollars, conditioned that he will faithfully and impartially discharge and perform all the duties required of him by law, and that he will promptly pay over to the party entitled to receive it, all moneys that may come into his hands during his term of office. This law shall apply to all justices of the peace appointed by the county commissioners' court.

Appointed, how, in unorganized counties. (Acts of 1879, p. 89.)

Art. 1561. The county commissioners' courts of the several counties in this state to which unorganized counties are attached for judicial purposes shall have and are hereby given power to appoint a justice of the peace and a constable for each of the unorganized counties attached to said county for judicial purposes, in accordance with the provisions of the law now in force authorizing such appointments in organized counties.

Additional justice of the peace for unorganized counties. (Acts of 1885, p. 88.)

Art. 1562. Whenever, in any unorganized county of the state of Texas, a necessity may exist for the appointment of more than one justice of the peace and constable for such county, and such fact is made known and set forth in a petition signed by one hundred qualified voters of said county, addressed to the county commissioners' court of the organized county to which such unorganized county is attached for judicial purposes, asking the appointment of such officers, it shall be the duty of such commissioners' court to lay off and designate as many justices' precincts in such unorganized county as may be necessary, not exceeding four, and such commissioners' court shall have and is hereby empowered to appoint one justice of the peace and one constable for each justice's precinct in such unorganized county, in accordance with the provisions of the law now in force authorizing such appointments in organized counties; and such justices' precincts shall be and they are hereby constituted election precincts in such unorganized county.

- Art. 1563. [1534] Where in any justice's precinct there may be a city of eight thousand or more inhabitants, there shall be elected two justices of the peace. Two justices in certain precincts. Ib.
- Art. 1564. [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 prescribed by law. Commission and qualification. (Const., art. 4, §20.) (Act Aug. 17, 1876, p. 165, §28.)
- Art. 1565. [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. Vacancy, how filled. (Const., art. 6, §28.) (Act Aug. 17, 1876, p. 165, §2.)
- Art. 1566. [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. Nearest justice to hold court, when. (Act Aug. 17, 1876, pp. 164, §25.)
- Art. 1567. [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. Justice disqualified, when. (Act Aug. 17, 1876, p. 164, 165, §24.)

CHAPTER TWO.

POWERS AND JURISDICTION.

	Article		Article
Jurisdiction in civil cases.....	1568	Other jurisdiction conferred by law.....	1572
To enter forfeiture of bail bonds.....	1569	No jurisdiction in certain cases.....	1573
To punish contempts.....	1570	To proceed with unfinished business.....	1574
To issue writs of garnishment, etc.....	1571		

- Article 1568. [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 controversy 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. Jurisdiction in civil cases. (Const., art. 5, §19.) (Act Aug. 17, 1876, p. 155, §33, 4.)
- Art. 1569. [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. 1570. [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. 1571. [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. 1572. [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.)

No jurisdiction in certain cases. (Const., art. 5, §8.)

Art. 1573. [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.

To proceed with unfinished business. (Act Aug. 17, 1876, p. 157, §6.)

Art. 1574. [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.

CHAPTER THREE.

TERMS OF THE COURT.

	Article		Article
Monthly terms	1575	May hold from day to day, etc.....	1577
Times and places of holding.....	1576	Failure of term	1578

Monthly terms
Ib. §25.
(Act Aug. 14, 1870, p. 87, §13.)
P. D. 6357.

Art. 1575. [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.

Times and places of holding. (Const., art. 5, §19.) (Acts of 1881, p. 10.)

Art. 1576. [1547] Justices of the peace shall hold the regular terms of their courts at their respective offices at such times as may be prescribed by the commissioners' court of the county.

May hold from day to day, etc. (Acts of 1870, p. 87.)

Art. 1577. [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.

Failure of term. Ib. §25.

Art. 1578. [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.

CHAPTER FOUR.

DOCKETS, BOOKS AND PAPERS.

	Article		Article
Justice's docket	1579	Books and papers to be delivered to successor	1583
Fee book	1580	Delivery of, may be enforced.....	1584
Other books	1581		
Custody of books, papers, etc.....	1582		

Justice's docket. (Act Aug. 17, 1876, p. 156, §5.)

Article 1579. [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 name of the sureties.

Art. 1580. [1551] He shall also keep a fee book in which shall be taxed all costs accruing in every suit commenced before him. Fee book.
Ib. §27.

Art. 1581. [1552] He shall also keep such other dockets, books and records as may be required by law. Other books.

Art. 1582. [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. Custody of
books, papers,
etc.

Art. 1583. [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. Books and
papers to be
delivered to
successor.
(Act Aug. 17,
1876, p. 156, §6.)

Art. 1584. [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. Delivery of,
may be en-
forced.
Ib.

CHAPTER FIVE.

VENUE.

[See "Venue of Suits" in article 1198.]

Article	Article
Suits to be brought in the county of de- fendant's residence, except, etc.....1585	Change of venue on affidavit..... 1590
Residence of single man.....1586	By consent 1591
Where two justices in one precinct.....1587	Where justice is disqualified..... 1592
Where two justices in one city or town..1588	Term "nearest justice" defined..... 1593
Where justice is disqualified.....1589	Order of transfer..... 1594
	Duty of justice in case of transfer..... 1595

Article 1585. [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 the several defendants resides, except in the following cases, and such other cases as are or may be provided by law: Suits to be
brought in the
county of
defendant's
residence,
except, etc.
Ib. §8.

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.
Ib.

Art. 1586. [1557] The residence of a single man is where he boards.

Where two
justices in one
precinct.
Ib.

Art. 1587. [1558] Where in any precinct there may be more than one justice of the peace, the suit may be brought before either of them.

Where two or
more justices
in one city or
town.
Ib.

Art. 1588. [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.

Where justice
is disqualified.
Ib.

Art. 1589. [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.

Change of
venue on affi-
davit.
Ib. §9.

Art. 1590. [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 pre-

inct, 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.

Art. 1591. [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.

By consent.

Art. 1592. [1563] If any justice of the peace shall be disqualified from sitting in an [any] civil case pending or which may hereafter be brought before him, or should such justice of the peace be sick or absent from the precinct, the parties to said suit may agree upon some person who is qualified to try said case, and in the event said parties fail to agree upon some person to try said cause at the first term of the court after service is perfect, it shall be the duty of the county judge in whose county said case is pending, upon the application of the justice of the peace in whose court said cause is pending, or upon the application of either party to said suit, to appoint some person who is qualified to try said cause, and the fact of the disqualification of the justice of the peace and the selection by agreement or appointment of some other person to try said cause shall be noted on the docket of said justice in said cause.

When justice is disqualified. (Amend. 1895, p. 26.)

Art. 1593. [1563a] 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.

The term "nearest justice" defined.

Art. 1594. [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.

Order of transfer.

Art. 1595. [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 precinct to which the same has been transferred.

Duty of justice in case of transfer.

CHAPTER SIX.

SECURITY FOR COSTS.

Rules of district courts, etc., apply as to security for costs.....1596

Article

Article 1596. [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.

Rules of district courts, etc., apply as to security for costs. Ib. §27.

CHAPTER SEVEN.

PARTIES.

	Article
Same rules as to parties as in district courts, etc.	1597
Same rules as to parties as in district courts, etc. Article 1597. [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.	

CHAPTER EIGHT.

PROCESS AND SERVICE.

	Article		Article
Process of justice's court, requisites of.....	1598	Justice may depute a person to serve process	1601
Citation to be issued.....	1599	Rules of district courts, etc., govern as to issuance and service of process.....	1602
Citation shall contain, what.....	1600		
Process of justice's court, requisites of. (Act Aug. 17, 1876, p. 158, §10.)	Article 1598. [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.		
Citation to be issued, when. Ib.	Art. 1599. [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 shall contain, what. Ib.	Art. 1600. [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 1598, 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.		
Justice may depute person to serve process. Ib.	Art. 1601. [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.		
Rules of district courts, etc., govern as to issuance and service of process. Ib.	Art. 1602. [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.		

CHAPTER NINE.

PLEADINGS.

Article Pleadings oral, but entered on docket...1603 Answer to be in writing and under oath.1604	Pleadings amendable1605	Article 1605
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Article 1603. [1573] The pleadings in the justices' courts shall be oral, except where otherwise specially provided; but a brief statement thereof may be noted on the docket.

Pleadings oral but entered on docket. Ib. §§5, 12.

Art. 1604. [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—

Pleadings to be in writing and under oath. (Acts of 1891, p. 85.)

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 or receiver, are not partners or receiver 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 2323, 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. 1605. [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.

Pleadings amendable.

CHAPTER TEN.

CONTINUANCE.

Cause may be continued, etc.....1606	Article 1606
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Article 1606. [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.

Cause may be continued, etc. Ib. §11.

CHAPTER ELEVEN.

APPEARANCE AND TRIAL.

<p>Appearance day Article Proceeding where defendant fails to ap- pear 1607 Appearance noted 1608 Jury trial may be demanded..... 1609 Court shall try case, when..... 1610</p>	<p>Article 1607 1608 1609 1610 1611</p>	<p>Call of the non-jury docket..... Article Plaintiff failing to appear, may be non- suited 1612 Proceedings, evidence, etc., to conform to rules governing district courts, etc. 1613 Judgment on trial without jury..... 1614</p>
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Appearance day.
 Ib. §18.

Article 1607. [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.

Proceedings where defendant fails to appear.
 Ib. §18.

Art. 1608. [1578] If the defendant, who has been duly served with a citation, shall fail to appear at or before ten 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 appears 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.

Appearance noted.

Art. 1609. [1579] If the defendant appear, the same shall be noted on the docket and the cause shall stand for trial in its order.

Jury trial may be demanded. (Const., art. 1, §15.)

Art. 1610. [1580] Either party may demand a jury as herein after provided.

Court shall try case, when.
 Ib.

Art. 1611. [1581] If neither party shall demand and be entitled to a jury trial, the cause shall be tried by the justice without a jury.

Call of the non-jury docket.
 Ib. §41.

Art. 1612. [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.

Plaintiff failing to appear may be non-sued.
 Ib. 18.

Art. 1613. [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.

Proceedings, evidence, etc., to conform to rules governing district courts, etc.
 Ib. §§14-16.

Art. 1614. [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.

Judgment on trial without jury.
 Ib. §11.

Art. 1615. [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.

CHAPTER TWELVE.

TRIAL BY JURY.

Article	Article
Jury trial may be demanded.....1616	Drawing of jury.....1630
Time of demand and deposit of jury fee.....1617	Challenge for cause.....1631
Jury trial day to be fixed.....1618	Challenge for cause, proceedings on same as in district courts, etc.....1632
Summons for jury to be issued, when, etc.....1619	Peremptory challenges, when and how made.....1633
Oath to sheriff, etc., summoning jury.....1620	The jury.....1634
Duty of the officer.....1621	When the jury is incomplete.....1635
Summons to juror, how served.....1622	Jurors to be sworn.....1636
Venire of jurors to be called.....1623	Oath of jurors.....1637
Excuses of jurors.....1624	Mode of proceeding on trial before jury, same as in district courts, etc.....1638
Defaulting jurors to be fined.....1625	Verdict for specific articles to assess their value separately.....1639
Other jurors summoned when necessary.....1626	Pay of jurors.....1640
Call of jury docket.....1627	
Challenge to the array, when proceedings thereon.....1628	
Challenge to the array, how made and proceedings thereon.....1629	

Article 1616. [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. 1617. [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.

Art. 1618. [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. Jury trial day to be fixed.

Art. 1619. [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. Summons for jury to be issued, when, etc.

Art. 1620. [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 juryman touching any case pending for trial; and that you will not, by any means, attempt to influence, advise or control any juryman in his opinion, in any case which may be tried by him, so help you God." Oath to sheriff, etc., summoning jury. (Act Aug. 1, 1876, p. 80, §12.)

Art. 1621. [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. Duty of the officer.

Art. 1622. [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. Summons to juror, how served.

Venire of jurors to be called.

Art. 1623. [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 juror.

Art. 1624. [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. 1625. [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. 1626. [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. 1627. [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. 1628. [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. 1629. [1599] The cause 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. 1630. [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. lb.

Art. 1631. [1601] If either party desires to challenge any juror for cause, such challenge shall now be made.

Challenge for cause, proceedings on same as in district court, etc.

Art. 1632. [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.

Peremptory challenges, when and how made.

Art. 1633. [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.

The jury.

Art. 1634. [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.

When jury is left incomplete. (Act Aug. 1, 1876, p. 82, §22.)

Art. 1635. [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.

Jurors to be sworn.

Art. 1636. [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.

Art. 1637. [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. 1638. [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. 1639. [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. 1640. [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.....1641	Court may, in certain cases, enforce judgment by attachment, fine, etc.....1646
Case tried without jury, decision in open court.....1642	No judgment without citation.....1647
Judgment1643	Confession of judgment.....1648
Costs1644	Warrant of attorney to be filed.....1649
Judgment for specific articles.....1645	Same rules as govern district courts, etc.1650

Article 1641. [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. 1642. [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. 1643. [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 controversy 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.

Judgment.

Art. 1644. [1614] The successful party in the suit shall recover his costs, except in cases where it is otherwise expressly provided.

Costs. Ib. §11, 14.

Art. 1645. [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 six per cent from the date of the judgment.

Judgment for specific articles. Ib. §19.

Art. 1646. [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.

Court may, in certain cases, enforce judgment by attachment, fine, etc. (Act May 11, 1846, p. 200, §17.) P. D. 1420.

No judgment without citation. (Acts Aug. 13, 1870, p. 87, §9; Aug. 17, 1876, p. 163, §19.) P. D. 6341.
Art. 1647. [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. 1648. [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 justice's 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. 1649. [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. 1650. [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	1651	Notice	1654
New trials may be granted.....	1652	Where motion granted, cause continued unless, etc.....	1655
Motion to be sworn to, except, etc.....	1653	But one new trial to either party.....	1656

Judgments by default, etc., may be set aside. Ib. §19.
Article 1651. [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. 1652. [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. 1653. [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. 1654. [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.

Where motion granted, cause continued, unless, etc. Ib. §17.
Art. 1655. [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.

But one new trial to either party. Ib.
Art. 1656. [1626] But one such new trial shall be granted to either party.

CHAPTER FIFTEEN.

EXECUTION.

	Article		Article
Judgments enforced by execution, etc.	1657	Issued to another county to be attested	1663
Execution	1658	by clerk	1663
Returnable in sixty days.....	1659	Dormant judgments, etc.....	1664
Taxation of costs.....	1660	The rules governing executions generally	1665
Execution to issue after ten days.....	1661	apply, except, etc.....	1665
Within the ten days, when.....	1662		

Article 1657. [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.

Art. 1658. [1628] Such execution or other process shall conform to the requirements of article 1598. 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. Execution.

Art. 1659. [1629] Such execution or other process shall be returnable in sixty days. Returnable in sixty days.
Ib. §22.

Art. 1660. [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. 1661. [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. §22.

Art. 1662. [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. 1663. [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 a 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. 3784.

Art. 1664. [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 Dormant judgments, etc.
(Act Nov. 9, 1866, p. 118, §§1, 3.)
P. D. 7005, 7007.

execution may issue at any time within ten years after the issuance of the preceding execution.

The rules governing executions generally apply, except, etc. (Act Aug. 17, 1876, §22.)

Art. 1665. [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.....	1666	Judgment and execution.....	1667

Stay of execution. (Acts of 1887, p. 10.)

Article 1666. [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 from the date of such judgment, 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 in such judgment for the full amount thereof, with interest and costs, which acknowledgment shall be entered in writing on the docket, and signed by the persons binding themselves as sureties; provided, no such stay of execution shall be granted unless the party applying therefor shall first file with the justice an affidavit in writing that he has not the money with which to pay such judgment, and that the enforcement of same by execution prior to three months would be a hardship upon him, and would cause a sacrifice of his property which would not likely be caused should said execution be stayed.

Judgment and execution on. Ib.

Art. 1667. [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 day.

CHAPTER SEVENTEEN.
APPEAL.

	Article		Article
Appeals may be taken.....	1668	When appeal perfected on affidavit.....	1672
Taken to district court, when.....	1669	Duty of justice in case of appeal.....	1673
Notice, bond and other proceedings on appeal	1670	Transcript, etc., to be transmitted to county court	1674
Affidavit of inability.....	1671		

Appeal may be taken. Ib. §21.

Article 1668. [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.

Art. 1669. 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.

Art. 1670. [1639] The party appealing, his agent or attorney, shall, 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. When such bond has been filed with the justice the appeal shall be held to be thereby perfected; but if, upon the call of the docket upon appearance day in the court to which the appeal is taken, the appellee fails to appear in person, or by attorney, the case shall be continued, unless it is shown to the court that notice of the appeal has been given as hereinafter provided; and no judgment by default shall at any time be rendered against an appellee whose appearance has not been entered in the case, unless and until it is made to appear to the court that notice in writing of such appeal has been served upon the appellee, his agent or attorney, at least five days before the first day of the term at which such judgment by default is sought to be taken. Such notice may be signed by the clerk of the court, or by the appellant, his agent or attorney, and may be served by the sheriff or any constable of the county, or by any other person competent to make oath of the fact; and the service shall be made by the delivery of a copy thereof to the appellee, his agent or attorney; and such service shall be evidenced by the return thereon of the officer executing the same, or by the oath of such other competent person indorsed thereon and filed with the papers in the case.

Notice bond and other proceedings on appeal. (Acts of 1883, p. 91.)

Art. 1671. [1639a] Where the appellant is unable to pay the costs of appeal, or to 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 same, at any time within ten days from and after the date of the judgment rendered therein, 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, or the justice of the peace of the precinct in which said case was tried, or the county judge of the county in which the suit is pending, to hear evidence and to determine the right of the party to his appeal.

Affidavit of inability to give bond. (Acts of 1887, p. 113.)

Art. 1672. [1739b] When the bond, or the 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 shall be held to be perfected.

When appeal perfected on affidavit. Ib.

Art. 1673. [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.

Duty of justice in case of appeal. Ib.

Art. 1674. [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

Transcript, etc., to be transmitted to county court. Ib.

make out and transmit 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	1675	Rules governing district courts, etc., to apply, except, etc.....	1677
Duty of justice on service of writ.....	1676		

Certiorari to remove cause to county court.

Article 1675. [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.

Duty of justice on service of writ of certiorari.

Art. 1676. [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 1673, 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.

Rules governing district courts, etc., to apply, except, etc.

Art. 1677. [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.

TITLE XXXIV.

Dentistry.

Article	Article
Unlawful to practice without license.....1678	Book of registration to be kept..... 1683
Board of examiners, term of office and vacancy, how filled.....1679	Such book as evidence.....1684
President and secretary elected and rules of procedure adopted.....1680	In the absence of quorum board to ad- journ from day to day.....1685
Meetings of the board.....1681	Temporary license, how issued.....1686
Who entitled to license.....1682	County clerk to record licenses.....1687

Article 1678. It shall be unlawful for any person to engage in the practice of dentistry in the state of Texas, unless said person has obtained a license from a board of examiners duly appointed and authorized to issue such license; provided, that dentists who have been in the regular practice of dentistry in this state for three years next preceding the passage of the act of March 27, 1889, shall not be required to submit to an examination, and shall be entitled to a license without fee, which shall be transmitted to him by mail or otherwise, upon his application, accompanied by satisfactory evidence to the fact of his having been in the regular practice for the time required.

Unlawful to practice without license. (Acts of 1889, p. 91.)

Art. 1679. The board of examiners shall be appointed by the judge of each judicial district, and shall be composed of three reputable dentists residing in said district, who shall hold their offices two years from the date of appointment, and any vacancy shall be filled by the district judge as aforesaid.

Board of examiners, term of office, and vacancy, how filled. Ib.

Art. 1680. The board shall, immediately after appointment, select one of their number as president and one as secretary, and adopt all rules necessary for the transaction of the business that may come before them.

President and secretary elected, and rules of procedure adopted. Ib.

Art. 1681. Said board shall meet annually at some central point in their respective districts to conduct examinations and grant licenses. Notice of the time and place of such meeting shall be given for one month by publication in some newspaper published in the district.

Meetings of the board. Ib.

Art. 1682. Any applicant who shall furnish satisfactory evidence of having graduated and received a diploma from any reputable dental college, and any applicants under the provisions of article 1678 of this chapter, and all other applicants who undergo a satisfactory examination as to their qualifications and shall pay to the said board a fee of five dollars, to be used for advertising and incidental expenses, shall be granted license, which license shall entitle the person to whom granted to practice dentistry in any county where the same has been recorded, as required by article 1687.

Who entitled to license. Ib.

Art. 1683. Said board shall keep a book, in which shall be registered the names of all persons licensed to practice dentistry by said board.

Book of registration to be kept. Ib.

Art. 1684. The book so kept shall be a book of record, and a transcript from it, certified to by the officer who has it in keeping, with the common seal of said board, shall be evidence in any court in this state.

Such book as evidence. Ib.

In the absence
of quorum
board to ad-
journ from
day to day.
ib.

Temporary
license, how
issued.
ib.

County clerk
to record
licenses.
ib.

Art. 1685. Two members of said board shall constitute a quorum for the transaction of business, and should a quorum not be present on the day appointed for its meeting, the member present may adjourn from day to day until a quorum is present.

Art. 1686. One member of said board may grant a license for an applicant to practice until the next regular meeting of the board, when he shall report the fact, at which time such temporary license shall expire, but such temporary license shall not be granted by a member of the board within one year after the board has rejected the applicant.

Art. 1687. Every person to whom license is issued by said board of examiners shall, within thirty days from the date thereof, present the same to the clerk of the county in which he resides, who shall officially record said license in a book in his office, and shall be entitled to demand a fee of fifty cents for his services, but a temporary license issued under article 1686 of this chapter need not be recorded.

TITLE XXXV.

Descent and Distribution.

[For Descent of Homestead, see title "Homestead."]

Article	Article
Where intestate leaves no husband or wife1688	Advancement brought into hotchpotch..1694
Where intestate leaves husband or wife.1689	Per capita and per stirpes.....1695
No distinction on account of source of property, except in cases of adoption..1690	Rule as to community estate.....1696
Rule as to whole and half blood.....1691	Passes charged with debts.....1697
No corruption of blood, forfeiture of estate, etc.....1692	Jus accrescendi abolished.....1698
Persons not in being.....1693	Illegitimate children and issue of void marriages1699
	Bastards inherit from mother.....1700
	Alienage no bar to inheritance.....1701

Article 1688. [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 parcenary 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.

Art. 1689. [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

Where intestate leaves no husband or wife.
(Act March 18, 1848.)
P. D. 3419.

Where intestate leaves husband or wife.
P. D. 3422.

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 nor 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.

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. 1690. [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.

Rule as to whole and half blood. (Act March 18, 1848.)

P. D. 3424.

Art. 1691. [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.

No corruption of blood, forfeiture of estate, etc. (Const., Bill of Rights, §21; act March 18, 1848.)

P. D. 3418.

Persons not in being. (Act March 18, 1848.)

P. D. 3423.

Art. 1692. [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 estate of those who destroy their own lives shall descend or vest as in case of natural death.

Art. 1693. [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.

Advancements brought into hotchpotch.

P. D. 3426.

Art. 1694. [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.

Per capita and per stirpes. (Acts of 1887, p. 49.)

Art. 1695. [1652] When the intestate's children, or brothers and sisters, uncles and aunts, or any other relations of the deceased standing in the first and same degree alone come into the partition, they shall take per capita—that is to say, by persons; and when a part of them being dead and a part living, the descendants of

those dead have right to partition, such descendants shall inherit only such portion of said property as the parent through whom they inherit would be entitled to if alive.

Art. 1696. [1653] Upon the dissolution of the marriage relation by death, all property belonging to the community estate of the husband and wife shall go to the survivor, if there be no child or children of the deceased or their descendants; but if there be a child or children of the deceased, or descendants of such child or children, then the survivor shall be entitled to one-half of said property, and the other half shall pass to such child or children, or their descendants. But such descendants shall inherit only such portion of said property as the parent through whom they inherit would be entitled to if alive.

Rule as to community estate. (Acts of 1887, p. 76.)

Art. 1697. [1654] In every case the community estate passes charged with the debts against it.

Passes charged with debts. P. D. 5498.

Art. 1698. [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.

Jus accrescendi abolished. (Act March 18, 1848.) P. D. 3429. (Ross v. Armstrong, 25 Tex., Sup., p. 366.)

Art. 1699. [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.

Illegitimate children and issue of void marriages. P. D. 3427.

Art. 1700. [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.

Bastards inherit from mother. P. D. 3428.

Art. 1701. [1658] In taking 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.

Alienage no bar to inheritance. P. D. 44, 45, 46.

TITLE XXXV. A.

Detectives.

EMPLOYMENT OF ARMED FORCES OF DETECTIVES, OR OTHER NON-RESIDENT PERSONS PROHIBITED.

	Article		Article
Employment of non-resident detectives prohibited	1701a	Penalty	1701b

Employment of non-resident detectives prohibited. (Act of 1893, p. 159.)
Penalty.
1b.

Article 1701a. No person, corporation, or firm shall be permitted to employ any armed force of detectives, or other persons not residents of this state, in the state of Texas.

Art. 1701b. Any person, firm, or corporation employing such forces contrary to the provisions of preceding article shall be liable to pay to the state of Texas, as a penalty, not less than twenty-five nor more than one thousand dollars, to be recovered before any court of competent jurisdiction in this state; provided, that nothing herein shall be construed to deprive any person, firm, or corporation of the right of self-defense, or in defense of the property of said person, firm, or corporation by such lawful means as may be necessary to such defense.

TITLE XXXV. B.

Drainage.

	Article		Article
Commissioners' court to construct drains.	1701c	Burden of proof	1701l
Conditions precedent to construction.	1701d	Grounds to be kept open by owners.	1701m
Estimate to be made by viewers.	1701e	Requisites of petition when drain extends into plural counties.	1701n
How estimates shall be made.	1701f	Joint viewers to co-operate under orders of their respective courts.	1701o
Notice to owners of lands affected.	1701g	Duty of viewers when drain benefits public roads, etc.	1701p
Owners shall have right to be heard, etc.	1701h	Majority report of viewers sufficient.	1701q
Duty of court on hearing of petition.	1701i	Compensation of viewers.	1701r
Viewers to take oath; form of.	1701j	Assessments and damages; how paid.	1701s
Appeal available; conditions of.	1701k		

Article 1701c. The commissioners' court of any county in this state, at any regular or called session thereof, may, in the manner hereinafter provided, and shall have power, whenever the same shall be conducive to the public health, convenience or welfare, or where and whenever the same will be of public benefit or utility, to cause to be straightened, widened, altered, deepened, any creek, bayou, or other stream or water course, and shall cause to be constructed and maintained, as hereinafter provided, any ditch, drain or water course within any of the said counties, and shall have power to make the said improvement, if necessary, by removing from any adjacent lands or any stream or water course any timber, bush, tree or other substance liable to or causing the obstruction thereof, and shall also have power to construct in connection with any such ditch or drain any side, lateral, spur or branch ditch or water course necessary to the accomplishment of this title; provided, however that no ditch, drain, outlet or water course shall be deepened, widened, constructed or maintained without a sufficient outlet being provided for all water that may collect therein; provided further, that the word "ditch" in this title hereafter shall be construed to embrace any ditch, drain or water course that may be constructed under the provisions of this title.

Commissioners' court authorized to construct drains, etc. (Acts of 1895, p. 151.)

Art. 1701d. Before the commissioners' court of such county shall establish any ditch, drain or water course there shall be filed with the clerk of the county court of said county a petition signed by at least five persons who are land owners and whose land will be liable to be affected by or assessed for the expense of the construction of the same, setting forth the necessity thereof, with a general description of the proposed starting point, route and terminus of the said ditch; and said petitioners shall give a bond not to exceed one hundred dollars, with good and sufficient sureties, payable to the said county, to be approved by the clerk of the said court, conditioned to pay all expenses in case the commissioners' court shall fail to establish said proposed ditch, drain or water course. As soon as said petition is filed said court shall, if in regular session, or at their next regular session, appoint a jury of three freeholders and householders of the county, not interested in the construction of the proposed work, and not of kin to any of the parties interested there-

Conditions precedent to such construction of drains, etc. **Id.**

in, who shall constitute a jury of viewers, who shall meet at a time and place specified by the said court in the order of making said appointment preparatory to commencing their duties as hereinafter specified, and it shall be the duty of the said clerk of the said county court thereupon to issue to the said viewers a certified copy of the petition and order of said court, who shall proceed at the time set in said order with a surveyor, who shall be a civil engineer, or a civil engineer and surveyor, to make an accurate survey of the line of said ditch, drain or water course, from its source to its outlet; and they shall cause stakes or monuments to be set along said line at intervals of one hundred feet, together with such intermediate stakes as may be necessary, and numbered progressively at each one hundred feet; and they shall establish permanent bench marks along said line, at intervals of one mile or less, as may be necessary; and they shall prepare a map showing the location of said ditch, drain or water course, together with the position of stakes or monuments, with numbers corresponding with those on the ground, and the position of bench marks, with their elevations referred to on assumed or previously determined datum. The map should also show the lines and boundaries of adjacent property, and the position of county roads and railroads which may be affected by said ditch or drain, and such information should be obtained as will lead to the determination of the benefits or damages which will accrue from the construction of the same; and they shall prepare a profile of the line of said ditch, drain or water course, which shall show the assumed datum and the grade line of the bottom of the same, and the elevation of each stake or monument and other important feature along the line, such as top of bank and bottom of all ditches or water course and surface of water, top of rail and bottom of tie, foot of embankment, bottom of burrow pits, of all railroads, and center of road, and bottom and top of ditches of highways. And they shall, in tabular form, give the depth of cut, width at bottom and width at top at the source, outlet, and at each one hundred feet stake or monument of said ditch, drain or water course; and they shall make a computation of the total number of cubic yards of earth to be excavated and removed from said ditch, drain or water course, and an estimate of the total cost of construction of the whole work, and they shall prepare specifications in detail for the execution of the same; and they shall have power, when they find it necessary, to provide for running said ditch under ground through drain tiles or other materials, as they may deem best, by specifying size of tile or other kind of material to be used in such underground work, and shall include the cost of same in the estimate of the total cost of the work; and they shall set apart and apportion to each parcel of land, and to each corporation, road or railroad, and to the county when public highways are benefited, a share of said work in proportion to the benefits which will result to each from such improvement, and the cost of the construction of each share or allotment separately. And they shall describe each parcel of land to be assessed in the construction of said ditch, giving the number of acres in each tract assessed and an estimate of the number of acres benefited, the amount that each tract will be benefited by the construction of said work, and the amount of each tract as assessed therefor; and they shall also ascertain and give the names of the owners of the lands that are assessed in the construction of said ditch, drain or water course.

as far as they may be able to ascertain by reasonable enquiry and search of the public records, and report whether or not the proposed ditch or drain will be of public utility; and they shall submit with their report a copy of the map and profile of the line of said ditch, drain or water course, and a copy of the specifications for the construction of the same, which, together with the report, shall become a public record, and shall be placed in the custody of the county clerk, to be presented [preserved] as such.

Art. 1701e. Whenever a public ditch, drain or water course is located wholly or in part of the bed of a private ditch already or partially constructed, the viewers shall make an estimate of the number of cubic yards of earth already excavated and the cost of the same on each tract of land, and deduct the same from the assessment thereon.

Estimate to be made by viewers.
Ib.

Art. 1701f. All lands benefited by public ditch, drain or water course shall be assessed in proportion to the benefit to the said lands by the construction thereof, whether it pass through said lands or not; and the viewers in estimating the benefit to lands in controversy by said ditch shall not consider what benefit such lands will receive after some other ditch or ditches shall be constructed, but only the benefits that may be received by reason of the construction of the public ditch as it affords an outlet for the drainage of such lands; and in the making of the said assessment should the viewers find that the construction of said ditch or drain would to any extent construct or constitute a public road of utility to the county in that section, or be a material benefit in the drainage of any public road then constructed, they will assess as against the county such sum as will represent the benefit so accruing to the public; provided, that all assessments for benefits accruing to counties or county roads shall be approved by the commissioners' courts of such counties.

How estimates shall be made by viewers.
Ib.

Art. 1701g. The said jury of viewers, as provided for in this title, shall issue a notice in writing to the land owner through whose lands such proposed ditch or drain may run, or to his or their agent or attorney, of the time when they shall proceed to lay out such ditch, or when they shall proceed to lay out such drain, or when they will assess the damage incidental to the construction of same, which notice shall be served upon such owner, his agent or attorney, at least five days before the day named therein; if such owner is a non-resident of the county the notice shall be given by publication in a newspaper published in the county, as notices are required to be given to non-resident defendants as to actions in the district or county court, and such ditch or drain may be constructed four weeks after such publication, the cost of publishing the same to be paid as directed by the commissioners' court.

Notice to be issued by viewers to owners of lands affected.
Ib.

Art. 1701h. All persons whose land may be affected by such ditch, drain or water course, shall have the right to appear before said viewers and freely express their opinions on all matters pertaining thereto, and the owner of any such lands may at the time stated in said notice, or previously thereto, present to the jury a statement in writing of any objections to or dissatisfaction therewith, and any claim for damages which he may have by reason of the making of the said ditch or drain; and a failure to make such claim in writing, as herein specified, for damages or compensation, shall be deemed and held a waiver for all right thereto, all of which said claim or objection shall be returned to the commissioners' court, in connection with the report of the said viewers.

Owners shall have right to appear before viewers in opposition, etc.
Ib.

Duty of commissioners' court on hearing of petition.
Ib.

Art. 1701i. The commissioners' court, at the time set for the hearing of said petition, shall hear and determine the same, in connection with all remonstrances or objections thereto, and if they find that the said viewers' report is made in accordance with the provisions of this title, and it be in favor of the proposed work, and if they find the proposed ditch or drain to be of public utility, or conducive to public health, or of public benefit or convenience, they shall enter an order on the minutes establishing the same, as specified in the said report, and order the same to be constructed according to the said report, and shall then or thereafter take such further action and make such other and further orders and decrees in the premises as may be proper or necessary to secure the execution of said work. But should said viewers report adversely to the said work, the board shall dismiss the petition and tax the costs as against the said petitioners.

Viewers to take oath; form of.
Ib.

Art. 1701j. The said viewers, before proceeding to act as such, shall take the following oath, before any officer authorized to administer oaths, to-wit: "I do solemnly swear that I will lay out the ditch or drain now directed to be laid out by the order to us directed in the commissioners' court, according to law, without favor or affection, malice or hatred, to the best of my ability, skill and knowledge. So help me God."

Appeal available; conditions of.
Ib.

Art. 1701k. Any person or corporation aggrieved thereby may appeal from the final order of the commissioners' court made in said proceedings and entered upon their record to the county court of that county within ten days thereafter, by filing within ten days thereafter a transcript of said proceedings in said county court, and also filing within the said ten days with the clerk of the said court an appeal bond, with at least two good sureties, to be approved by the said county clerk, conditioned that he will prosecute such appeal to effect and pay all costs that may be adjudged against him in said court; and the said appeal shall be heard and determined upon the following issues, to-wit:

1. Whether said ditch shall be conducive to the public health, convenience or welfare.

2. Whether the route thereof is practicable.

3. Whether the assessments made for the construction of such ditch are in proportion to the benefits to be derived therefrom.

4. The amount of damages, if any, to be allowed to any person or persons, or corporation; and if more than one person appeal the judge of the said court shall order the said cases to be consolidated and tried together, and the rights of each party shall be separately determined by the said court and jury, if any, in its verdict and final determination, and the cause so appealed and so conducted in said county court shall have precedence over all other causes on the docket of a different nature, and shall be tried and determined as other civil cases in said court. Either party to such action may appeal to such appellate court as has jurisdiction of said cause, and said action shall be returnable at once to said appellate court at either of its terms, and said action so filed shall have precedence in said appellate court of all cases of a different character therein pending.

Burden of proof.
Ib.

Art. 1701l. In the trial of all cases so appealed from the order of the commissioners' court the burden of proof shall rest upon the complainant.

Art. 1701m. Every person or corporation through whose lands any public ditch is constructed shall be required to keep the same open, free, and clear from all obstructions upon his or its premises, by him or it placed therein, and in case of failure to do so shall be liable to pay all reasonable and necessary expenses of removing such obstruction.

Grounds to be kept open by owners.
Ib.

Art. 1701n. Whenever the route of the proposed ditch, drain, or water course extends into two or more counties, then a petition shall be signed by at least five free-holders, one or more of whom are land owners in the county other than that of the filing of the petition, and whose lands will be liable to be assessed for the construction of such ditch, and file the same with the clerk of the commissioners' court, the said petition to be filed in the county containing the head or source of the proposed ditch, at least ten days before any regular meeting of the commissioners' court of that county, and thereupon the clerk of such court shall transmit to the clerk of the court of such other county or counties interested therein a certified copy of such petition; and it shall be the duty of the commissioners' court of each county interested in the proposed work, at their first regular session after such petition is filed, to appoint three disinterested freeholders and householders of their respective counties as viewers, in like manner as is provided for the appointment of viewers on a ditch in but one county, to meet and act jointly at such time and place as the board of commissioners of the county where the petition is filed may designate, and such joint viewers shall have the same power and perform the same duties as is provided in this title for the viewers on a ditch in one county; and they shall file a report of their proceedings with the clerk of each of said counties so interested at least two weeks before the next regular session of the board of commissioners, whereupon the clerk of each county shall give notice in the manner provided for as to ditches in one county, and the time for the hearing thereof shall be set by the respective courts of each county; provided further, that in an action of a joint board of viewers the approval and report of a majority of the whole board shall be necessary to constitute a valid report of said board.

Requisites of petition when drain extends into two or more counties.

Art. 1701o. The joint board of viewers, as herein provided for, of the counties interested in said joint ditch, shall proceed to establish the same in the manner specified in ditches in but one county, and in all matters pertaining to such joint ditch the board of commissioners shall act in the same manner, so far as is applicable, as is required by this title for ditches into but one county, and they shall act jointly, and the same shall be determined by the respective orders of the said respective commissioners' courts, and such further proceedings had thereon as herein provided for in but one county.

Joint viewers to co-operate under orders of their respective courts.
Ib.

Art. 1701p. When any ditch established under this title drains either in whole or in part any public road or railroad, or benefits any such road or railroad, so that the roadbed or travel or track of any such road will be made better by the construction of any such ditch, then the jury of viewers shall apportion to any such county if the same be a public road, or to such railroad if the same be a railroad, such portion of the costs and expenses thereof as herein provided for to private individuals.

Duty of viewers when drain benefits public roads or railroads.
Ib.

Art. 1701q. That in all reports made by any jury of viewers the same shall be sufficient if signed by a majority of said viewers.

Majority report of viewers sufficient.
Ib.

Compensation
of viewers.

Art. 1701r. The said jury of viewers shall each receive the sum of three dollars per day as compensation for said work for each day so actually engaged. And said surveyor and engineer shall receive such compensation as shall be fixed by the commissioners' court.

Assessments
and damages,
how paid.
Ib.

Art. 1701s. That all assessments, sums and charges by the said viewers, on order of court assessed against any land or lands shall be a lien thereon, and shall be collected as other assessments and taxes are collected under the general tax laws of this state. That any damages, if any, that the said jury of viewers or commissioners' court assesses in favor of any individual or corporation shall be paid out of the county treasury upon the order of the said court. And any sums assessed against any county on account of any public road shall be paid by the said county under an order of the commissioners' court.

TITLE XXXVI.

Elections.

CHAPTER ONE.

TIME AND PLACE OF HOLDING ELECTIONS.

	Article		Article
Time of holding general elections.....	1702	City wards, etc., shall be election pre-	
Time of holding special elections.....	1703	cincts	1706
Hours of election and for one day only.....	1704	Precincts in unorganized counties.....	1707
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ber precincts, how, and appoint pre-		ties	1708
siding officer and place of holding elec-		Voting for commissioners in unorganized	
tions	1705	counties	1709

Article 1702. [1659] General elections shall be held every two years, 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. 1703. [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. 1704. [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. 1705. The commissioners' court of each county, at their first regular term in each year, if they deem it necessary, may divide their respective justices' precincts into as many election precincts as they shall deem expedient, which shall all be numbered, and no two shall be designated by the same number. No election precinct shall be formed out of any two or more justices' precincts, and they shall designate one place in each of such election precincts at which elections shall be held; and they shall, at their first regular or called term in each year, select and appoint from and among the residents of each election precinct some suitable person to be the presiding officer of each precinct; but each justices' precinct shall constitute at least one election precinct.

Commissioners' court to divide and number precincts, how, and appoint presiding officer and places of holding elections.
(Acts of 1879, p. 38.)

Art. 1706. [1664] In each incorporated city, town or village each ward shall constitute an election precinct; provided, that the commissioners' court of the several counties may and it shall be their duty to divide any ward of any city or town into as many election precincts as they may deem proper; and provided further, that towns and villages incorporated in accordance with chapter eleven of title eighteen shall not necessarily constitute a separate election precinct, except in elections pertaining solely to the affairs of said towns and villages.

City wards, etc., shall be election precincts.
(Acts of 1889, p. 10.)

Art. 1707. [1665a] Each unorganized county in the state of Texas shall constitute an election precinct, and the commissioners' court of a county to which an unorganized county is attached for judicial purposes shall, by an order duly spread on the minutes of the com-

Precincts in unorganized counties.
(Acts of 1881, p. 97.)

missioners' court, designate one place within each unorganized county, at which all elections in such unorganized county shall be held.

Presiding officers in unorganized counties. (Acts of 1881, p. 97.)

Art. 1708. [1665b] It shall be the duty of the commissioners' court to which any unorganized county is attached for judicial purposes to appoint some suitable person in each of such unorganized counties, to serve as a presiding officer of elections in said unorganized county, which appointment shall be made in the same manner as in the appointment of presiding officers in election precincts in organized counties.

Voting for commissioners in unorganized counties. (Acts of 1885, p. 89.)

Art. 1709. Each unorganized county of the state of Texas which is attached, for judicial purposes, to an organized county shall be attached, for election purposes, to some one of the commissioners' precincts of such organized county, and voters in such unorganized county shall be authorized to vote in any election for commissioner of such commissioners' precinct; provided, when more than one election precinct has been established by law in such unorganized county of the state, each election precinct therein shall be attached, for election purposes, severally to one of the commissioners' precincts of such organized county, and voters in such election precincts shall be authorized to vote in any election for commissioner of the commissioner's precinct to which such election precinct has been attached.

CHAPTER TWO.

OFFICERS OF ELECTIONS.

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Voters may appoint presiding officer, when	1714	Powers of the judges of election.....	1720
Appointment by voters must be certified with election returns	1715		

Presiding officers of elections to be appointed. (Acts of 1883, p. 39.)

Article 1710. [1667] At the first regular or called session of the commissioners' court in 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 officer of elections in said precinct, and said appointment shall be noted upon the minutes of the court; provided, that the commissioners' court of any county may have the power when they deem advisable to appoint two presiding officers for each election precinct, one of whom shall be the presiding officer at the ballot-box used for the deposit of ballots cast for electors for president and vice-president of the United States, and members of congress of the United States, and the other presiding officer at the ballot-box used for the deposit of ballots cast for state, district and county officers.

Qualification of presiding officer.

Art. 1711. [1668] No person shall be appointed presiding officer who is not a qualified voter of the precinct for which he is so appointed.

Shall act for what time.

Art. 1712. [1669] A presiding officer appointed by the commissioners' court shall continue to act as such for two years, and until his successor is appointed.

Art. 1713. [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.

Certified copy of order of appointment shall be delivered to presiding officer.

Art. 1714. [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.

Voters may appoint presiding officer, when. (Act Aug. 23, 1876, p. 307, §9.)

Art. 1715. [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.

Appointment by voters shall be certified with election returns. Ib.

Art. 1716. [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.

Judges and clerks of election shall be appointed, etc. Ib. §8.

Art. 1717. [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 to be administered to judges and clerks. Ib. §8.

Art. 1718. [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 discharge the duties of presiding officer of elections to the best of your skill and understanding, so help you God."

Oath of the presiding officer. Ib.

Art. 1719. [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. 1720. [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

Powers of the judges of elections. Ib. §20.

closing the polls, the party arrested shall be taken before the proper magistrate for examination or trial as in other cases.

[Note.—Article 1721 [1678] omitted in conformity with the report of the joint committee on amendments to the revised civil code. See Sen. Jour., 1895, p. 478.]

CHAPTER THREE.

ORDERING ELECTIONS.

	Article		Article
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Writs of election shall be issued, etc.....	1724	Twenty days' notice of any election shall be given	1728
Writs of election shall be delivered to whom, etc.....	1725	Who shall order, etc., town or city elections	1729

Governor shall order certain elections. (Act Aug. 23, 1876, p. 306, §3.)

Article 1722. [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.

County judge shall order certain elections. Ib. §2.

Art. 1723. [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.

Writs of election shall be issued, etc. Ib. §7.

Art. 1724. [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 delivered to whom, etc.

Art. 1725. [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.

Forms shall be furnished by secretary of state, etc. Ib. §6.

Art. 1726. [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. 1727. [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. (Acts of 1891, p. 13.)

Art. 1728. [1685] Where an 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; provided, that in case a vacancy shall occur in the senate or house of representatives during a session of the legislature, then ten days' notice of a special election to fill such vacancy shall be sufficient notice of said election.

Art. 1729. [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.

Who shall order, etc., town or city elections. Ib. §23.

CHAPTER FOUR.

SUFFRAGE.

	Article
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"Residence" defined	1733

Who are qualified to vote in city elections, etc.	1734
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When vote challenged, proceedings in certain elections	1736

Who are not qualified to vote. (Const., art. 6, §1.) (Act Aug. 23, 1876, p. 307.)

(Acts of 1889, p. 92.)

Article 1730. [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. But any person who possesses all the other constitutional qualifications such as would entitle him to the right of suffrage may be restored to full citizenship and right of suffrage by the governor, when he shall have served out his time in the penitentiary, or shall have been pardoned.
4. All soldiers, marines and seamen employed in the service of the army or navy of the United States.

Art. 1731. [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.

Who are qualified voters. (Const., art. 6, §2.) Ib. §14.

Art. 1732. [1689] All voters in any county shall vote in the election precinct in which they reside.

Voters shall vote in precinct where they reside, except, etc. (Act Aug. 23, 1876, p. 308, §14.) (Acts of 1881, p. 97.)

Residence defined. lb. §14. (See art. 1557.—L.)

Art. 1733. [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.

Who are qualified to vote in city, town, etc., elections. (Const., art. 6, §3.) lb. §15.

Art. 1734. [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.

Challenge of vote. (Act March 16, 1848.) P. D. 3603.

Art. 1735. [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.

When vote challenged, proceedings in certain city elections. (Acts of 1891, p. 47.)

Art. 1736. In any election, state, county or municipal, being held in any city or town of ten thousand inhabitants or more, according to the last preceding United States census, when the right to vote of any elector offering to vote is challenged, proceedings shall be had as prescribed in article 393.

CHAPTER FIVE.

MANNER OF HOLDING AN ELECTION AND MAKING RETURNS THEREOF.

Article	Article
Vote shall be by ballot.....	Returns shall not be estimated, unless, etc.
Poll lists and manner of receiving and numbering votes.....	Certificates of election to county and precinct officers.....
Secrecy of the ballot guarded.....	When a county is a representative or senatorial district.....
Counting the votes.....	Returns of elections for certain state and district officers.....
Ballots which shall not be counted.....	Such returns shall be counted, when and by whom.....
Kind of ballots to be used; names not to be pasted over.....	Governor shall give certificate of election, when.....
Returns of elections, how and to whom made.....	Returns for governor and lieutenant-governor.....
Same subject.....	Secretary of state shall keep returns, etc.
Within what time returns shall be delivered.....	Returns for members of the legislature.....
Tally lists shall be kept.....	Returns shall be transmitted, how and to whom.....
Ballots, etc., to be placed in a box and delivered to county clerk.....	Duty of district returning officer.....
Ballots, etc., shall be burned, when.....	Count may be made before the thirtieth day, when.....
Presiding officer shall retain one poll and one tally list.....	County judge shall certify to the secretary of state the officers elected and qualified.....
Elections in precincts of over one hundred votes.....	
Regulation of voting in.....	
Compensation of officers.....	
Commissioners' court shall open returns, when.....	

Vote shall be by ballot. (Acts of 1883, p. 39.)

Article 1737. [1693] In all elections by the people, the vote shall be by ballot, which ballot may be either written or printed, or written in part, or printed in part, which ballot shall be deposited in the ballot-box as hereinafter provided; provided, however, that whenever the commissioners' court of any county shall have made an order appointing two presiding officers in each election precinct, as provided in article 1710, then one of said presiding officers shall be

designated as the presiding officer to receive and count and return, as provided by law, the ballots for electors for president and vice president of the United States, and members of congress of the United States, and the other of said presiding officers shall be designated as the officer to receive, count and return the ballots cast for state, district and county officers; each to be provided with a metallic or wooden box, to be used for said purpose; and all laws in force pertaining to the holding of elections and making returns thereof shall apply alike to the managers of the election at each of said ballot-boxes.

Art. 1738. [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.

Poll lists and manner of receiving and numbering votes. (Act Aug. 23, 1876, p. 308, §16.)

Art. 1739. [1695] No officer of election shall unfold or examine a ballot received, nor shall they examine the same or the indorsement on any ballot 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.

Secrecy of the ballot guarded. *Ib.*

Art. 1740. [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.

Counting the votes. *Ib.* §17.

Art. 1741. [1697] No ballot which is not numbered as provided in article 1738 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.

Ballots which shall not be counted. *Ib.* §16.

Art. 1742. 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.

Kind of ballots to be used. (Acts of 1879, p. 119.)

Names not to be pasted over.

Art. 1743. [1698] When the ballots have all been counted, the managers of the election in person shall make out triplicate returns of the same, certified to be correct, and signed by them officially, showing, first, the total number of votes polled at such box; second, the number polled for each candidate, one of which returns, together with poll lists and tally lists, shall be sealed up in an envelope and delivered by one of the managers of election to the county judge of the county; another of said returns, together with poll lists and tally lists, shall be delivered by one of the managers of election to

Return of elections, how and to whom made. (Acts of 1883, p. 50.)

the clerk of the county court of the county, to be kept by him in his office open to inspection by the public for twelve months from the day of the election; and the other of said returns, poll and tally lists shall be kept by the presiding officer of the election for twelve months from the day of election.

Same subject.

Art. 1744. [1699] In case of vacancy in the office of county judge, or the absence, failure 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 he, or the county judge, as the case may be, shall deliver the same to the county commissioners' court on the day appointed by law to open and compare the polls.

Within what time returns shall be delivered.

Art. 1745. [1700] The election returns shall be delivered as provided in the two preceding articles, on or before the Monday next following the day of election.

Tally lists shall be kept.

Art. 1746. [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. (Acts of 1881, p. 97.)

Art. 1747. [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 days of election excluded, deliver said box to the clerk of the county court of his county, or to the county to which the unorganized county is attached for judicial purposes, whose duty it shall be to keep the same securely; and in the event of any contest growing out of elections 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; provided, that all questions arising at any election board shall be settled and determined by the presiding officer and the judges, anything in any law to the contrary notwithstanding.

Ballots, etc., shall be burned, when lb.

Art. 1748. [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. 1749. [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 election, subject to the inspection of any one interested in such election.

Elections in precincts of over 100 votes. (Acts of 1887, p. 21.)

Art. 1750. The presiding officer of each election precinct which shall have cast more than one hundred votes at the last preceding election shall, on or before the day of election, select from among the qualified voters of the precinct three judges and four clerks, to be made from the different political parties if demanded, as far as practicable, and there being present a sufficient number of the party making such demand who are willing and competent to serve in such position. Said presiding judge, before balloting begins, shall designate two of said judges to be counting judges, and such presiding judge and said remaining judge shall be the receiving judges of election, and said presiding judge shall designate two of said clerks to be receiving clerks and two of said clerks to be canvassing clerks of said election. The said receiving clerks shall keep the poll lists and the said canvassing clerks shall keep the tally lists now provided for by law.

Art. 1751. There shall be provided by the presiding judge in each election precincts two ballot-boxes, one of which shall be numbered number one and the other number two. Before the balloting begins said judge shall open and examine said boxes, and remove everything therefrom. One of said receiving judges shall receive the ballot of each voter, and after pronouncing the name of such voter in an audible voice shall pass the ballot to the other receiving judge, who shall number the same and deposit it in said ballot-box number one, which shall be kept securely closed while the balloting continues for one hour from the time of opening the polls. At the expiration of said hour the receiving judges shall deliver said ballot-box number one to the counting judges, who shall immediately deliver over to said receiving judges ballot-box number two, which ballot-box number two shall be opened and examined in the presence of all the judges, and when everything is removed therefrom shall be securely closed, and until the ballots in box number one have been counted said receiving judges shall receive and deposit ballots therein in the same manner as during the first hour ballots were received and deposited in ballot-box number one. After the delivery of ballot-box number one to the counting judges the same shall be immediately opened by them and the tickets shall be taken out one at a time by one of the counting judges, who shall read distinctly while the ticket remains in his hand the name or names written or printed thereon, also the office that is intended to be filled by such person voted for, and deliver the same to the other counting judge, who shall place the same in another box and keep securely until the counting is finished, and then said box, with all the ballots cast at said election, shall be returned to the county clerk as provided for by law. The same method shall be observed with each ticket, and the counting shall continue thus until all the ballots in the box are counted. And then the counting judges shall securely close ballot-box number one and deliver the same to the receiving judges, and receive from the receiving judges ballot-box number two, and so on in the same manner until the polls are closed and all the ballots are counted. No person or persons shall be admitted in the room or place where such ballots are being counted except the judges and clerks of election; provided, that any political party may select a representative man, who may be admitted as a witness of such counting. It shall be the duty of one of the judges to announce to the voters present the total number of votes polled at each change of the boxes; but the judges, clerks and witnesses shall make oath that they will make no statement nor give any information of any kind as to the number of votes polled for any office or person, nor the name of any person voted for, nor any other fact touching in any way to show the state of the polls at any time previous to the closing of the polls of said election on the day of the same. When any person offering to vote shall be objected to, the manager of the election, with the two first named judges on the list of judges, 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 list opposite the name of such voter.

Regulation of
voting in.
(Acts of 1887,
p. 21.)

Art. 1752. The presiding officer, judges and clerks shall be entitled to receive as compensation for their services the sum of two

Compensa-
tion of officers.

dollars per day, the same 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; provided, twelve working hours shall be considered a day within the meaning of this article. One of the judges shall deliver the returns to the county clerk immediately, and receive two dollars for delivery of the returns, if delivered within two days; provided, said judge shall not receive the two dollars for delivering the returns if he shall have to travel less than five miles in so doing.

County commissioners shall open returns, when. (Acts of 1883, p. 50.)

Art. 1753. [1705] On the Monday next following the day of election, and not before, the county commissioners' court 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; provided, that in the event of a failure from any cause of the commissioners' court to convene on the Monday following the election to compute the votes, then said court shall be convened for that purpose upon the earliest day practicable thereafter.

Returns shall not be estimated, unless, etc.

Art. 1754. [1706] No election returns shall be opened or estimated unless the same have been returned in accordance with the provisions of this chapter.

Certificates of election to county and precinct officers.

Art. 1755. [1707] After an estimate of the result of an election has been made, as provided for in this law, 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 such election was held, and shall sign the same and cause the seal of the county court to be thereon impressed.

When a county is a representative or senatorial district. (Acts of 1883, p. 50.)

Art. 1756. [1708] If the county constitutes a senatorial or representative district of itself, the county commissioners' court shall, at the same time, make an estimate of the votes polled for members of the legislature; and the county judge 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.

Returns of elections for certain state and district officers. (Acts of 1883, p. 50.)

Art. 1757. [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 Monday next following the day of election, 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.

Such returns shall be counted, when and by whom. Ib.

Art. 1758. [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 the election.

Art. 1759. [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. 1760. [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 1757, 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. 1761. [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 return to the speaker of the house of representatives.

Secretary of state shall keep returns, etc.
Ib.

Art. 1762. [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.

Art. 1763. [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.

Returns shall be transmitted how, and to whom.
Ib.

Art. 1764. [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.

Duty of district returning officer.
Ib.

Art. 1765. [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 certificate of election as provided for in the preceding article at any time before said thirtieth day.

Count may be made before 30th day, when.
Ib.

County judge shall certify to secretary of state the officers elected and qualified.
(Act March 6, 1863.)
P. D. 3604.

Art. 1766. [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 precinct office, certifying when and how the vacancy occurred.

CHAPTER SIX.

MANNER OF HOLDING ELECTIONS IN CITIES OF TEN THOUSAND INHABITANTS OR OVER.

Article	Article
Registration of voters, when.....1767	Proof before registrar of elector's qualifications1781
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Voter to give registrar information as to his qualifications1769	Certificates of registration, how cancelled and preserved.....1783
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Notice of time and place of the registration to be published, when and how.....1775	Candidates may furnish ballots, when and how1789
Compensation of registrar, and when and how paid1776	Ballot prepared, how and by whom.....1790
Books, stationery and blank certificates furnished registrar1777	Judges may prepare ballot for illiterate person and person disabled.....1791
Registration books shall show, what.....1778	Cities may adopt other methods.....1792
List of registered voters to be furnished managers of election1779	
Registrar authorized to administer oaths1780	

Registration of voters, when.
(Acts of 1892, P. 67.)

Art. 1767. In all cities in this state having a population of ten thousand inhabitants or more, to be determined by the last United States decennial census or by a census provided for by the commissioners' court of the county where said election is to be held, there shall—upon the petition of five hundred citizens of such city—be prior to each general election, either state, county or municipal, had a registration of all voters in said city, in the manner hereinafter provided.

Unregistered electors can not vote.

Art. 1768. Each qualified elector of such city, under the constitution and laws of this state, shall be entitled to register; but no elector of such city who fails to register under the provisions of this chapter shall vote at any state, county or city election for which registration is had under the provisions of this chapter.

Voter to give registrar information as to his qualification.

Art. 1769. Each person offering to register under the provisions of this chapter shall give to the registrar, hereinafter provided for, under oath, if demanded, the following information, to-wit: His name, the street and number of his residence, the number of the ward in which he resides, and such other information touching his qualifications as a voter in the city as may be necessary to establish his right to registration. Should the place of his residence not be numbered, then he shall give such description of his place of residence as will enable the same to be correctly located.

Appointment and qualification and term of office of registrar.

Art. 1770. There shall be appointed by the commissioners' court of each county in which there is located a city having a population

of ten thousand inhabitants or more one registrar of all the voters of each such city in said county, who shall be a qualified elector of such city, and shall hold his office for two years and until his successor shall have been appointed and qualified.

Art. 1771. It shall be the duty of the registrar provided for in the preceding article to register all the qualified electors of such city as is hereinafter provided, and to do and perform all other duties required of him by the provisions of this chapter.

Duties of registrar.

Art. 1772. Said registrar, when appointed and before entering upon his duties as such, shall take and subscribe before some officer authorized by law to administer oaths the oath of office prescribed by the state constitution for all state and county offices, which said oath of office shall be filed with the county clerk of the county in which such registrar is appointed. Upon the filing of said oath of office with the county clerk as herein provided, the county clerk shall issue to such registrar a certificate of his appointment and qualification, which said certificate shall be sufficient authority for the said registrar to do and perform all the official duties herein prescribed and required.

Oath of registrar and certificate of appointment.

Art. 1773. Said registrar shall have authority to appoint and employ as many deputies or assistants, who shall be qualified electors of such city, as may be necessary to the prompt and efficient discharge of his official duties; provided, there shall be appointed one deputy from each political party, if demanded by the chairman of the county executive committee of the party in said county two days prior to the opening of the registration books, as hereinafter provided.

Registrar to appoint deputies.

Art. 1774. Said registrar shall open the books of his office for the registration of all the voters in the city on the first Tuesday of the month preceding and prior to the month in which the election is held for which registration is required under the provisions of this chapter, and said registrar shall keep the same open for the registration of voters for twenty consecutive days, Sunday excluded, from eight o'clock a. m. till eight o'clock p. m. of each day and no longer.

Registration books, when opened.

Art. 1775. Said registrar shall keep his office during the registration of the voters in some convenient room or place; notice of the time and place of each registration of voters shall be given in some daily newspaper published in said city for at least five consecutive days prior to the day of beginning such registration and during the time of such registration. But should there be no daily newspaper published in the said city, then notice may be given by printed handbills posted throughout the city for five consecutive days prior to the beginning of the registration and during the time of such registration. The publication of which notice shall be paid for in all state and county elections by the commissioners' court of the county out of the general revenue fund of said county, and for all city elections by the city council out of the general revenue funds of the city.

Notice of time and place of the registration to be published, when and how.

Art. 1776. The registrar shall receive as compensation in full for all services herein required eight cents for each certificate of registration issued, to be paid in all state and county elections by the commissioners' court of the county out of the general revenue funds of the county, and in all city elections by the city council of the city out of the general revenue funds of the city. Upon the completion and delivery of the work, as hereinafter provided, to the county clerk in all state and county elections, the commissioners' court, or the city council, as the case may be, shall cause to be issued to the registrar

Compensation of registrar, when and how paid.

a warrant on the treasurer for the full amount due on said work, as herein provided, which shall be full compensation for all services performed.

Books, stationery and blank certificates furnished registrar.

Art. 1777. The commissioners' court shall furnish and supply the registrar with all necessary books, stationery and blank certificates of registration and an office in which to perform all the necessary work of registration during the time he is necessarily engaged in the registration of voters as herein provided, but in all city elections the city council shall furnish and supply them.

Registration books shall show, what.

Art. 1778. The registrar's books shall contain a list of all registered voters of the city, with the number of the certificates issued written opposite to the name of the holder of the certificate, and the number of the ward in which the voter resides, and shall also indicate the color or nationality of the holder of the certificate, or such other information as will enable the judges of election to determine the identity of the holder of the certificate, and shall also show the street and number of the residence of the voter, or such other information as will enable his place of residence to be correctly located.

List of registered voters to be furnished managers of election.

Art. 1779. The registrar shall make a list of all the registered voters of his city for the use of the managers of the election of each ward in the city, which list shall be a true copy of his books, as is required and provided for in article 1778, which said lists shall be made out and filed with the county clerk, or city secretary, as the case may be, at least five days prior to the day of election, which said lists shall then be furnished the presiding officer of the election of each ward in the city, as other election papers are furnished such presiding officers of election.

Registrar authorized to administer oaths.

Art. 1780. The registrar herein provided for is hereby authorized and empowered to administer all necessary oaths to applicants for registration and also to all witnesses touching the qualifications of applicants for registration, and any person who shall swear falsely about his own qualifications as a voter of the city, or any person who shall as a witness for the applicant swear falsely about the qualifications of such applicant shall be deemed guilty of false swearing, and upon conviction in any court of competent jurisdiction shall be punished as provided by law for the punishment of false swearing in other cases.

Proof before registrar of elector's qualifications.

Art. 1781. Should the registrar have doubts or not be satisfied as to the qualifications of the applicant for registration, he may, in addition to the oath of the applicant for registration, demand proof of the right of such applicant to register before he shall issue to such applicant a certificate of registration, which proof shall consist of the sworn testimony of two well known citizens of the city, if demanded, which oath or oaths shall be sworn and subscribed to by the applicant and by each of his witnesses separately, and the said oaths shall be filed and kept as a part of the records of the registrar's office.

Certificate of registration, its form, uses and purposes.

Art. 1782. Each person who shall register under the provisions of this chapter shall receive a registration certificate, which shall be numbered to correspond with the number of registered certificate issued, and which shall, in addition to the name of the holder, be dated and signed by the registrar, which certificate shall be preserved and presented to the judges of the election, and should the person presenting such certificate not correspond with the description of the person to whom issued as appears on the registrar's

books, then he shall not vote until he shall have satisfied the judges of election of his right to vote.

Art. 1783. Each certificate of registration when presented and voted shall have stamped or written thereon by one of the judges of election the word "voted." No certificate shall be voted unless it corresponds with the name and number on the list of registered voters herein provided for, and the holder shall correspond with the other information contained on the list of registered voters furnished the managers of the election as herein provided, or that the judges of the election are satisfied that the holder of the certificate is the person to whom it was issued, and when voted one of the judges of the election shall write or stamp opposite the name of the holder the word "voted," on the list. And when a certificate has been voted it shall be considered as exhausted, and shall be placed by one of the judges of the election in a closed box, and when the election is closed said box and contents shall be sealed up and deposited with the county clerk or city secretary, as the case may be, after having been labeled "registered certificate," and said box and contents shall be preserved by the said clerk or city secretary, as is provided by law for the preservation of the ballots of the election.

Certificate of registration, how cancelled and preserved.

Art. 1784. The list of registered voters shall, at the close of the election, be placed by the managers of the election in the envelope covering the returns to be delivered to the county clerk or city secretary, as is provided by law, and shall be preserved by such officer in the same manner as is provided for the preservation of election returns thus made.

List of registered voters, returned and preserved

Art. 1785. Any person offering to vote in a city at any election for which registration has been had of all the voters of such city shall not vote unless he presents a certificate of registration, as herein provided; or in case he has lost or mislaid his certificate, he shall so state, and if his name shall appear on the registered list and he is known to the judges to be the person whose name thus appears on the registered list, or can furnish satisfactory evidence that he is the person whose name appears on the said list, then he shall be entitled to vote; provided, the certificate has not been previously voted, in which case he shall not vote; and provided further, that when any person does vote without presenting his certificate of registration, as herein provided, then one of the judges or managers of the election shall stamp or write opposite his name on the registration list the words, "voted, certificate lost."

Rules for voting when certificate is lost.

Art. 1786. Every male person who shall have become of the age of twenty-one years by the day of the election and shall be otherwise a qualified elector, or who shall have become a qualified voter of the city by the day of the election for which the registration is made, and is a bona fide citizen of the city in which he offers to register, shall be entitled to register as a qualified voter of the city, provided he shall establish the same as herein provided.

Who entitled to register.

Art. 1787. The following safeguards and regulations shall be observed to secure the voter from interference while casting his ballot at said election, to-wit: The polling places in the several precincts in the city shall be provided with a guard rail, so constructed and placed that only such persons as are inside of said rail can approach within six feet of the ballot boxes or compartments or booths at which electors are to prepare their ballots for voting. The arrangements shall be such that neither the ballot boxes nor voting booths, nor the electors while preparing their ballots, shall be hid-

Regulating the manner of voting and voting places.

den from view of those just outside of the said guard rail or from the judges, and yet the same shall be far enough removed and so arranged that the elector may conveniently prepare his ballot for voting with secrecy. There shall be provided in each polling place not less than one such compartment or booth for every fifty electors to vote at such polling place, and every polling place shall have at least three such compartments or booths, which shall be made with three sides closed and the front side open, and inside thirty-two inches wide, thirty-two inches deep and six feet four inches high, containing a shelf, and shall be arranged with hinges, to fold up when not in use convenient for storage. The county judge, county clerk and sheriff of each county shall constitute a board, a majority of whom may act, to provide the voting booths or compartments and guard rails required by this chapter. When said appliances have been provided, said board shall file with the county commissioners' court a written report of their action, giving a detailed statement of the expenses incurred in providing said booths and guard rails; and it shall be the duty of said court to certify to the comptroller of public accounts the amounts due and to whom due, and the number of booths and feet of guard rails provided. Upon receipt of said certificate the comptroller shall issue his warrant upon the state treasurer in favor of the parties to whom said account is due for one-half of the said amount, and the same shall be paid out of the state treasury, and the residue thereof shall be paid by the respective counties. During the election and counting of ballots no person other than the judges and clerks of elections and the electors admitted as herein provided for the purpose of providing their ballots and voting shall be admitted or permitted to be within said rail.

The ballot, its form and requisites and by whom furnished.

Art. 1788. All ballots used by the voters at said elections shall be furnished by officers conducting said election, upon which shall be printed the names of all the candidates for state, county, precinct or city offices upon one ticket and arranged according to the respective parties to which the candidates may belong, and whenever a voter has been furnished with a ballot by an officer conducting the election the presiding officer shall stamp with a rubber stamp provided for that purpose the words "Official Ballot," and no ballot cast without such words stamped upon it by the said presiding officer shall be counted at said election.

Candidates may furnish ballots, when and how.

Art. 1789. All ballots used at any election shall be upon substantially the same character of paper, which shall be white, and any candidates shall have the right to have ballots printed such as are named in the preceding article, which he must furnish to the presiding officer at least one day before the day of holding the election.

Ballot prepared, how and by whom.

Art. 1790. Not more than one person shall at one time be permitted to occupy any one compartment or place provided for electors to prepare their ballots, except when an elector is unable to prepare his ballot, he may be accompanied by two judges to assist him, and no person shall remain in or occupy any such compartment longer than may be necessary to prepare his ballot.

Judges may prepare ballot for illiterate persons and persons disabled.

Art. 1791. Any elector who declares to the presiding officer that he can not read or write, or that by blindness or other physical disability he is unable to prepare his ballot, shall upon request receive the assistance of two of the judges in the preparation thereof.

Cities may adopt other methods.

Art. 1792. Cities containing a population of ten thousand inhabitants or more may through their city council adopt such meth-

ods to protect the purity of the ballot in elections held at their municipal elections, not inconsistent with the provisions of this chapter, as may be deemed advisable.

CHAPTER SEVEN.

CONTESTING ELECTIONS.

Contest of election for district attorney.....1793	Article	Bonds subject to suit.....1804g	Article
Contest of election for district judge.....1794		Appeal available, and shall have precedence.....1804h	
Contest of election for appellate judges.....1795		Transcript on appeal.....1804i	
Contest of election for county office.....1795		Costs, how taxed.....1804j	
Other contested elections.....1797		Measure of damages.....1804k	
Notice of contest.....1795		Contest for legislature; service, etc.....1804l	
Reply to notice of contest.....1799		Depositions in such case.....1804m	
Service of notice.....1800		Who may take depositions.....1804n	
Copy of notice and reply to be filed.....1801		Depositions, how returned.....1804o	
Cause to have precedence; procedure in contest for district clerk.....1802		Procedure in the house in which contest is pending.....1804p	
Rules of evidence and procedure on trial.....1803		Committee on privileges and elections; powers and duties.....1804q	
Contestee in certain cases to execute bond.....1804		Procedure on trial by the body; fees, etc.....1804r	
Contestee failing, contestant to execute bond.....1804a		Contest for governor, lieutenant-governor, etc.....1804s	
Facts certified to governor.....1804b		Other contested elections.....1804t	
Contestant commissioned, when.....1804c		Parties defendant under preceding article.....1804u	
Contestee commissioned, when.....1804d			
Fraudulent votes not to be counted.....1804e			
Election to be declared void, when.....1804f			

[Note.—This chapter comprises the Act of April 6, 1895, p. 58. It repeals and supersedes the same chapter of the codification of 1893, being Articles 1793 to 1804 inclusive, or old Articles 1724 to 1726 inclusive, and 1746 to 1751 inclusive, and repeals all other conflicting laws.]

Article 1793. 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, and if there are two district judges in said county, then to be tried before either of said judges.

Contest of election for district attorney. (Acts of 1895, p. 58.)

Art. 1794. 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 court of such adjoining district, and in counties having two or more district courts then to be tried by the district court of the adjoining district in said county.

Contest of election for district judge. Ib.

Art. 1795. Contested elections for the office of chief justice or associate justice of the supreme court and judges of the court of criminal appeals shall be tried in the county and by the district court of the district, or one of them, in which the seat of government is located. And contested elections for the office of chief justice of the court of civil appeals or associate justice of any supreme judicial district in the state, shall be tried by the district court, or either of them if there are more than one, in the county where said court of civil appeals has its sittings.

Contest of election for appellate judges. Ib.

Art. 1796. Contested elections for any county office shall be tried by the district court in the county where the election was held. If there are two such courts, then to be tried by either of them.

Contest of election for any county office. Ib.

Art. 1797. Contested elections for other purposes than the election of officers shall be tried by the district court in the county where the election was held, or either of them if there is more than one such court.

Other contested elections than for officers. Ib.

Notice of
contest.
Ib.

Art. 1798. Any person intending to contest the election of any one holding a certificate of election as a member of the legislature or for any office mentioned in this law, shall within thirty days after the return day of election give him a notice thereof in writing and deliver to him, his agent or attorney, a written statement of the ground on which such contestant relies to sustain such contest. By the "return day" is meant the day on which the votes cast in said election are counted and the official result thereof declared.

Reply to no-
tice of
contest.
Ib.

Art. 1799. The person holding such 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 there-
to in writing.

Service of
notice, etc.
Ib.

Art. 1800. 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.

Copy of no-
tice and re-
ply to be
filed, etc.
Ib.

Art. 1801. If the contest be for the validity of an election for any state office, except the office 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.

Cause to have
precedence;
procedure if
contest be for
district clerk.
Ib.

Art. 1802. 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. Should the office contested for be that of clerk of the district court, then a clerk pro tem. shall be appointed as is provided now by law in suits where the clerk is a party to the suit.

Rules of evi-
dence and pro-
cedure on
trial.
Ib.

Art. 1803. In trials of all contests of election the evidence shall be confined to the issues made by the statement and reply thereto, which statement and reply may be amended as in civil cases; and as to the admission and exclusion of evidence, the trial shall be conducted under the rules governing proceedings in civil causes.

Contestee in
certain cases
to execute
bond.
Ib.

Art. 1804. Whenever the validity of an election for an officer other than for members of the legislature 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 law, file with the clerk of the court in which such contest is pending a bond with two or more good and sufficient sureties, payable to the contestant, 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 a period of two years. 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.

On failure of
contestee in
such cases,
contestant to
execute bond.
Ib.

Art. 1804a. 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 payable to the contestee,

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.

Art. 1804b. 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.

Execution of bond by contestant to be certified to governor.
Ib.

Art. 1804c. Upon receiving such certificate from the clerk it shall be the duty of the governor to issue a permission 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.

Governor to commission contestant to perform duties of office pending determination of contest.
Ib.

Art. 1804d. 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 1804, 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 1804a, 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.

On failure of contestant to execute bond governor to commission contestee.
Ib.

Art. 1804e. If upon the trial of any contested election case any vote or votes be found to be illegal or fraudulent, the court trying the same shall subtract 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.

Fraudulent votes not to be counted.
Ib.

Art. 1804f. Should it appear on the trial of any contest provided for in article 1801 that it is impossible to ascertain the true result of the election as to the office about which the contest is made, either from the returns of the election or from any evidence within reach, or from the returns considered in connection with other evidence, or should it appear from the evidence that such a number of legal voters were by the officers or managers of the election denied the privilege of voting as, had they been allowed to vote, would have materially changed the result, the court shall adjudge such election void, and direct the proper officers to order another election to fill said office, which election shall be ordered and held and returns thereof made in all respects as required by the general election laws of the state.

Election to be declared void, when.
Ib.

Art. 1804g. 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 subject to suit.
Ib.

Art. 1804h. Either the contestant or contestee may appeal from the judgment of the district court to the court of civil appeals under the same rules and regulations as are provided for appeals in civil cases, and such cases shall have precedence in the court of civil appeals over all other cases.

Appeal available, and to have precedence of hearing.
Ib.

Art. 1804i. 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 court of civil appeals for that district.

Transcript on appeal.
Ib.

Costs, how
taxed.
Ib.

Art. 1804j. The costs in all contested election cases shall be taxed according to the laws governing costs in civil cases, except when otherwise specially provided, and bond for cost may be required as in civil suits.

Measure of
damages.

Art. 1804k. Where the contest shall have been decided against one of the parties and the other party shall have filed a bond and performed the duties of the office under the provisions of this chapter, the bond so filed shall inure to the benefit of the successful party in any suit thereon in a court having jurisdiction of the amount in controversy, and the measure of damages recoverable, besides cost of suit, shall be the salary, fees, and emoluments of office of which he has been deprived, less such reasonable expenses as the party holding the office shall have incurred in executing the duties of the office; provided, that he shall have acted in good faith in receiving the certificate of election or commission for the office.

Service of
notice, etc.,
when the con-
test is for the
legislature.
Ib.

Art. 1804l. 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 envelope 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 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. 1804m. 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 deposi-
tions.

Art. 1804n. 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.

How deposi-
tions may be
returned.

Art. 1804o. 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.

Procedure in
the house in
which the
contest is
pending.
Ib.

Art. 1804p. The notice and statement of contest and the other papers pertaining thereto shall immediately after the organization of the legislature be opened by the president of the senate or the speaker of the house of representatives, as the case may be; and the

same shall be referred to the committee on privileges and elections of the house in which that contest is pending, which committee shall proceed without delay to fix a time for the hearing of said case, and after due notice to the parties thereto shall investigate the issues between said parties, hearing all the legal evidence that may be presented to said committee, and shall as soon thereafter as practicable report their conclusions of law and fact in respect to said case to the house by which said committee was appointed, accompanied by all the papers in the cause, and the evidence taken therein, with such recommendations as may to them seem proper. Any one or more of the committee dissenting from the views of the majority may present a minority report.

Art. 1804q. The rules of evidence and the laws in force respecting the admissibility of evidence, the taking of depositions and the issuance and service of process in the district courts of this state shall be observed by said committee, so far as the same may be applicable. Said committee shall have the power to send for persons and papers, and the chairmen of said committees shall have the power to issue all process necessary to secure the attendance of witnesses and the production of papers, ballot boxes and other documents before said committee, and such process shall be executed by the sergeant-at-arms of the house in which the contest is pending, or by such other person as may be designated by the presiding officer of said house.

Hearing of evidence by committee on privileges and election; powers and duties of committee.
Ib.

Art. 1804r. The house in which the contest is pending shall, as soon as practicable after the report of the committee has been received, fix a day for the trial of the contest, and shall proceed to determine whether the contestant or contestee, or either of them, is entitled to the contestant's seat; provided, the said house may hold the election void after full consideration of all the evidence and for the reasons prescribed in article 1804f, and in such case the governor shall be at once notified of the vacancy. Such fees shall be paid to the witnesses and the officers serving the process as shall be prescribed by the rules of the house in which said contest is pending, and no mileage or per diem shall be paid to either of the parties to said contest until said case is determined, and in no case shall any mileage or per diem be paid to any party against whom any contest is decided.

Procedure on final trial by the body; fees, etc.
Ib.

Art. 1804s. 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 for governor, lieutenant-governor, etc.
Ib.
(Const., art. 4, §3.)

Art. 1804t. 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 part of a 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.

Other contested elections.

Parties de-
fendant under
preceding
article.
Ib.

Art. 1804u. 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, or the officer who declared the official result of said election, or one of them, 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 contest 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.

CHAPTER EIGHT.

MISCELLANEOUS PROVISIONS.

	Article		Article
In case of a tie, another election shall be ordered	1805	Governor shall commission officers, except, etc.....	1809
County commissioner shall act, when.....	1806	Provisions of this title shall apply to all elections	1810
Voters privileged from arrest, except, etc	1807	Persons not eligible to hold office.....	1810a
County judge shall certify death of certain officers to secretary of state.....	1808	Certificate of election shall not issue unless, etc.....	1810b

In case of a tie another election shall be held.
(Act Aug. 23, 1876, p. 310, §24.)
P. D. 3606.

Article 1805. [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.

County commissioners shall act, when.
(Act Feb. 11, 1850.)
P. D. 3625.

Art. 1806. [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.

Voters privileged from arrest, except, etc.
(Const., art. 6, §5.)
(Act Aug. 23, 1876, p. 307, §11.)

Art. 1807. [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.

County judge shall certify death of certain officers to secretary of state.
(Act March 6, 1863.)
P. D. 3604.

Art. 1808. [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.

Governor shall commission officers, except, etc.
(Act Aug. 23, 1876, p. 310, §22.)

Art. 1809. [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.

Provisions of this title shall apply to all elections.
Ib. §23.

Art. 1810. [1759] The provisions of this title shall apply to all elections, whether for officers or for other purposes, where not otherwise provided by law.

Persons not eligible to hold office.
(Act 1895, p. 31.)

Art. 1810a. No person shall be eligible to any county or state office in the state of Texas unless he shall have resided in this state

for the period of twelve months, and six months in the county in which he offers himself as a candidate next preceding any general or special election, and shall have been an actual bona fide citizen in said county for more than six months.

Art. 1810b. There shall not be issued by the county judge of any county in this state to any person elected or appointed to any office in this state a certificate of election unless he shall have resided in this state for the period of twelve months, and having been an actual bona fide citizen of said county for more than six months in the county or district in which he offers himself for election next preceding any general or special election.

Certificate of
election shall
not issue, un-
less, etc.
Ib.

TITLE XXXVII.

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	1811	Electors shall convene, when and where, etc.	1816
Mode, places, etc., for election of electors	1812	Place of absent or disqualified elector, how supplied	1817
Returns of election by precinct officers	1813	Governor shall cause list of electors to be made, etc.	1818
Returns of election by counties	1814	Governor shall issue proclamation, etc.	1819
Secretary of state shall count returns, when, etc.	1815	Compensation of electors	1820

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 1811. [1760] On the Tuesday next after the first Monday in November, A. D. 1896, 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 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. 1812. [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. 1813. [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. 1814. [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. 1815. [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.

Art. 1816. [1765] The electors so chosen shall convene in the capitol, at the seat of government of the state, on the first Wednesday in 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.

Electors shall convene, when and where, etc.
Ib.
P. D. 3649.
(U. S. Revised Statutes, p. 21.)

Art. 1817. [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. 1818. [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. 1819. [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. 1820. [1769] Electors for 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 XXXVIII.

Escheat.

[See "Estates of Decedents." See "Aliens."]

Article	Article
When estates shall escheat.....1821	Appeal or writ of error.....1832
Duty of district or county attorney.....1822	Comptroller to keep accounts.....1833
Clerk to issue citation to those alleged to be in possession.....1823	Heirs afterward appearing may bring suit, etc.1834
Citation published, and its requisites...1824	Order of court in favor of claimant.....1835
Claimants may appear and plead.....1825	Proceeds of escheated property subject to disposition by the state.....1836
If no person appears.....1826	Final decree of probate court may be revised, when.....1837
If any person appears, issue and trial...1827	Governor may cause proceedings to be instituted, when1838
Judgment for the state, when.....1828	Suit must be in name of state.....1839
Costs against the state, how paid.....1829	
Judgment for state vests title in state.1830	
Writ of seizure and proceedings thereunder1831	

When estates shall escheat. (Acts of 1835, p. 35.)

Article 1821. [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; provided, that where no will is recorded or probated in the county where such property is situated within seven years after the death of the owner, it shall be prima facie evidence that there was no will, and where no lawful claim is asserted to, or lawful acts of ownership exercised in such property for the period of seven years, and this has been proved to the satisfaction of the court, it shall be deemed prima facie evidence of the death of the owner and of the failure of heirs, and the court trying the cause may, if such evidence is not rebutted, find therefrom in favor of the state.

Duty of district county attorney.

Art. 1822. [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 such attorney shall discover that no letters of administration on the estate of an intestate who has died without heirs have been granted; or where such attorney finds any estate, real or personal, in the condition specified in the next preceding article (1821) he shall file a petition in behalf of the state in the district court of the county where such property or any part thereof lies, 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 or 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.

Clerk to issue citation to those alleged to be in possession.

Art. 1823. [1772] The clerk of the court shall issue citation, as in other civil causes, for such of the defendants as shall be alleged

in the petition to hold possession of or claim such estate, requiring them to appear and answer at the next term of court.

Art. 1824. [1773] The clerk shall also issue a citation, setting forth briefly the contents of the petition, for all persons interested in the estate to appear and answer at the next term of court, which citation shall be published as required in other civil suits.

Citation published and its requisites. (Acts of 1885, p. 35.)

Art. 1825. [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.

Claimants may appear and plead. P. D. 3661.

Art. 1826. [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.

If no person appears. P. D. 3662.

Art. 1827. [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. 1828. [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; provided, that whenever judgment is rendered in favor of the state, whether by default or after trial upon the merits, a writ of possession shall be awarded as in other civil suits.

Judgment for the state, when. (Acts of 1885, p. 35.)

Art. 1829. [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. 1830. [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. 1831. [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 of the same at public auction in the manner provided by law for the sale of property under execution, and the proceeds, less the costs of court and attorneys' commissions, shall be paid into the treasury of the state; provided, that no real estate shall be sold by the sheriff or constable at less than the minimum price to be fixed by the judge before whom the cause was tried, said minimum valuation to be distinctly stated in the advertisement, and should there be on the day of sale no bona fide bid for as high an amount as the valuation fixed by the judge before whom the cause was tried there shall be no sale, and the writ shall be immediately returned to the court issuing the same; and thereafter said real estate may be sold by the attorney general in the same manner as lands bid in by the state under authority of article 292, Revised Civil Statutes, are now sold by that officer.

Writ of seizure and proceedings thereunder. (Acts of 1885, p. 35.)

Appeal or writ of error.
P. D. 3669.

Art. 1832. [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.

Comptroller to keep accounts.
P. D. 3670.

Art. 1833. [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.

Heir, etc., afterward appearing, may bring suit.
P. D. 3671.

Art. 1834. [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.

Order of court in favor of claimant.
P. D. 3672;
amend. 1895,
p. 189.

Art. 1835. [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; provided, that if such heir, devisee, legatee or legal representative or their assigns shall sue for and recover such estate, real or personal, in any court of competent jurisdiction in this state from any purchaser at sheriff's sale, as hereinbefore provided, or from his heirs, devisees, legatees, legal representatives or assigns, then and in any such event a certified copy of such judgment of recovery, together with the affidavit of the party cast in the suit that he is the owner of and entitled to the money theretofore paid into the state treasury as the proceeds of such escheated estate, shall be sufficient authority for the issuance by the comptroller of a warrant on the state treasury for the payment to such purchaser, his heirs, legal representatives or assigns, such net amount of money as was paid into the state treasury by reason of said sheriff's sale of such estate.

Proceeds of escheated property subject to disposition by the state.
P. D. 3674.

Art. 1836. [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.

Final decree of probate court may be revised, when.
(Act Nov. 13, 1866, p. 236, §1.)

Art. 1837. [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.

Governor may cause proceedings to be instituted, when.
(Act Nov. 13, 1866, p. 236, §2.)

Art. 1838. [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.

Art. 1839. [1788] All suits brought for the collection of the as-
sets turned over to the treasurer, under this chapter, shall be brought
in the name of "The State of Texas." Suit must be
in name of
state.
Ib. §3.

TITLE XXXIX.

Estates of Decedents.

CHAPTER ONE.

JURISDICTION.

	Article		Article
Probate jurisdiction of county court.....	1840	In what counties wills shall be probated	
Probate jurisdiction of district court.....	1841	and letters granted.....	1843
Proceedings of probate of will, etc.,		In case of concurrent jurisdiction of	
void, when, etc.....	1842	several courts	1844

Probate jurisdiction of the county court. (Const., art. 5, §16.)

Article 1840. [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 district court. (Const., art. 5, §8.)

Art. 1841. [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.

Proceedings of probate of will, etc., void, when, etc. (18 Texas, 195; 15 Texas, 617.)

Art. 1842. [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.

In what counties wills shall be probated and letters granted. (Act Aug. 9, 1876, p. 93, §1.)

Art. 1843. [1792] Wills shall be admitted to probate, and letters testamentary or of administration shall be granted—

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.

In case of concurrent jurisdiction of several courts.

Art. 1844. [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.

CHAPTER TWO.

RECORD BOOKS.

	Article		Article
Judge's probate docket.....	1845	Record books shall be indexed, etc.....	1849
Probate minutes	1846	Shall be evidence.....	1850
Claim docket	1847	What papers shall be recorded in pro-	
Probate fee book.....	1848	bate minutes	1851

Article 1845. [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—

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.

Art. 1846. [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.

Art. 1847. [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.

Art. 1848. [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.

Art. 1849. [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. 1850. [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. 1851. [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 applications 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
Decisions, etc., of court shall be rendered in open court	1852
And shall be entered of record, etc.	1853
Probate docket disposed of promptly	1854
No trial by jury in probate matters	1855
Duty of clerk to file papers, etc.	1856
Clerk shall issue all notices, etc.	1857
Power of court to attach and imprison executors, etc.	1858
Person having will, etc., may be attached, etc.	1859
Executions in probate matters	1860
County judge may enforce orders, etc., of previous court	1861
Requisites of citation in probate matters	1862
Service of citation	1863
Service by posting	1864
Mode of posting citation and return of same	1865
Citation by publication	1866
Rights, etc., of executor, etc., regulated by common law, etc.	1867

	Article
Depositions and rules of evidence	1868
In whom property vests upon death of testator or intestate	1869
Any person interested in an estate may file opposition, etc.	1870
Duty of county judge to call dockets, etc.	1871
Meaning of "term of court," "docket" and "minutes"	1872
Duty of judge to sign the minutes, etc.	1873
Attachment for property of estate may issue, when	1874
Annual exhibits required; final settlement, when	1875
Twenty days' notice of filing of exhibit shall be given, etc.	1876
When an executor or administrator shall be deemed to have qualified	1877
Depositions and rules of evidence	1878
Titles made by executors, etc., valid, although, etc.	1879
Sales by foreign executors validated	1879a

Decisions, etc., of court shall be rendered in open court, etc.

Article 1852. [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.

And shall be entered of record.

Art. 1853. [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.

Probate docket disposed of promptly. (Acts of 1881, p. 31.)

Art. 1854. [1802a] When the probate docket is taken up, it shall be disposed of with dispatch, without an adjournment of the court for more than three days at any time; and, in case of such adjournment, the reason therefor must appear upon the minutes.

No trial by jury in probate matters. P. D. 5481.

Art. 1855. [1803] There shall be no trial by jury in probate matters, except when expressly provided by law.

Duty of clerk to file papers, etc.

Art. 1856. [1804] The clerk of the county court shall receive and file all applications, complaints, petitions and all other papers per-

mitted 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.

Art. 1857. [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. 1858. [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. Ib. p. 129, §135.

Art. 1859. [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. Ib. p. 128, §126.

Art. 1860. [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 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.

Executions in probate matters. Ib. p. 129, §135.

Art. 1861. [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.

County judge may enforce orders, etc., of previous court. Ib. p. 130, §140.

Art. 1862. [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.

Requisites of citation in probate matters.

Art. 1863. [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 of citation.

Art. 1864. [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.

Service by posting. P. D. 5475.

Mode of posting citation and return of same.
Ib.

Art. 1865. [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. 1866. [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.
Ib. p. 130, §141.

Art. 1867. [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.
Ib. p. 129, §136.

Art. 1868. [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.
Ib. p. 127, §125.

Art. 1869. [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.

Any person interested in an estate may file opposition, etc.

Art. 1870. [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.

Duty of county judge to call dockets, etc.

Art. 1871. [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.

Meaning of "term of court," "docket," and "minutes."

Art. 1872. [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.

Art. 1873. [1821] It shall be the duty of the county judge, when 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 the judge to sign the minutes, etc.

Art. 1874. [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 orders 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, §133.)

Art. 1875. [1822a] Executors and administrators shall be required to make annual exhibits under oath, fully showing the condition of the estate; they shall be required to make final settlement of the estates they represent within three years from grant of letters, unless the time be extended by the court after satisfactory showing being made under oath; and upon failure in either case, shall be removed as provided in article 2027.

Annual exhibits required; final settlement, when. (Acts of 1881, p. 31.)

Art. 1876. [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 court house 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. 1877. [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. 1878. [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, 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.

Depositions and rules of evidence.

Titles made by executor, etc., valid, although, etc.

Art. 1879. [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 afterward be set aside, annulled and declared invalid.

Sales by foreign executors validated. (Acts of 1893, p. 102.)

Art. 1879a. All sales of real estate within this state, which have been heretofore made by executors of wills, which, prior to such sales, had been probated according to the laws of another state of the United States, having jurisdiction, and which wills possessed the requisites to pass title to real estate required by the statutes of this state, where such wills conferred upon the executors the power to sell the real estate so sold, independent of the probate court, and where such sales would have been valid and effectual to pass the title to such real estate had the wills been probated in this state, be and the same are hereby validated; provided, however, that the validation of such sales shall not defeat the rights of creditors of the testators of such wills, nor affect the title of purchasers for value from the heirs or devisees of the testators of such wills, where such purchases were made prior to the enactment hereof.

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 intestate1880	Citation to issue, and shall state, what.....1889
Wills shall not be probated after lapse of four years1881	Service of such citation, how made.....1890
Administration not barred, when.....1882	Citation where will can not be produced, or where it is nuncupative.....1891
Applications shall be in writing and filed.....1883	Service of such citation, how made.....1892
Application for probate of written will produced in court shall state, what.....1884	Service of such citation by publication, when1893
Will shall be filed with the application, etc.1885	No action shall be had until service of citation1894
What the application shall state where the will can not be produced in court.....1886	Application may be made, by whom.....1895
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Application for letters of administration shall state, what.....1888	One creditor may apply in behalf of several, etc.1897
	Bond shall be filed, etc.....1898
	Lien upon estate to secure bond.....1899

Application for letters must be filed within four years after death of testator or intestate. (Act Aug. 9, 1876, p. 94, §2; amend. 1893, p. 6.) P. D. 5505.

Article 1880. [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; provided, that this article shall not apply to citizens of this state who have suffered losses by Indian depredations and have died since such loss, and make the application for the purpose of recovering compensation for such loss. In all such cases the proper courts of this state are authorized to grant letters of administration upon the estate of any citizen, without regard to the date of his death, when the applicant for letters alleges in his application that the testator or intestate suffered losses by Indian

depreddation and that letters are sought for the purpose of enabling him or her to bring suit in the United States court of claims to recover compensation for such loss, under the act of congress of March 3, 1891, entitled, "An act to provide for the adjudication and payment of claims arising from Indian depreddations."

Art. 1881. [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.

Will shall not be probated after a lapse of four years, unless, etc.

Art. 1882. [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.

Administration not barred, when. P. D. 5507.

Art. 1883. [1830] All applications for 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.

Applications shall be in writing and filed. (Act Aug. 9, 1876, p. 94, §2.)

Art. 1884. [1831] An application for the probate of a written will produced in court shall state—

Application for probate of written will produced in court shall state what.

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. 1885. [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. 1886. [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 residences, 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. 1887. [1834] An application for the probate of a nuncupative will, in addition to the requirements of article 1884, 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.

Application for letters of administration shall state, what.

Art. 1888. [1835] An application for letters of administration shall state—

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.

Citation to issue, and shall state, what.

Art. 1889. [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—

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.

Service of such citation, how made.

Art. 1890. [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.

Citation when will can not be produced, or where it is nuncupative.

Art. 1891. [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.

Service of such citation, how made.

Art. 1892. [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, before the first day of the term of the court to which such citation is returnable.

Service of such citation, by publication.

Art. 1893. [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. 1894. [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. 1895. [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.

Art. 1896. [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—

Administration may be prevented, how. P. D. 5558.

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.

Art. 1897. [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.

One creditor may apply in behalf of several, etc. P. D. 5559.

Art. 1898. [1845] The bond provided for in article 1896, 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.

Bond shall be filed, etc.

Art. 1899. [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 1896.

Lien upon estate to secure bond.

CHAPTER FIVE.

PROBATE OF WILLS.

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Nuncupative will shall not be proved, when1902	Certified copy of record, etc., may be read in evidence, etc.1908
Nuncupative will must be proved, how1903	Will probated in another state or country may be filed and recorded in this state1909
Facts which must be proved1904	
Further proof in case of will which can not be produced in court1905	

Article 1900. [1847] A written will produced in court may be proved—

How a written will which is produced in court may be proved. (Act Aug. 9, 1876, p. 94, §3.)

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 resident of 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 to by the witnesses, or by deposition.

How written will not produced may be proved. (Tyner vs. Paschal, 27 Texas, 286.)

Art. 1901. [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.

Nuncupative will shall not be proved, when, etc. Ib. p. 95, §4. P. D. 1264.

Art. 1902. [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 must be proved, how. Ib. (10 Texas, 121; 20 Texas, 384.) P. D. 1264.

Art. 1903. [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.

Facts which must be proved. (Act to adopt and establish R. C. S., passed Feb. 21, 1879.)

Art. 1904. [1851] Before admitting a will to probate it must be proved to the satisfaction of the court—

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.

Further proof in case of will which can not be produced in court.

Art. 1905. [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.

All testimony shall be committed to writing, etc. Ib. p. 95, §7.

Art. 1906. [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.

Order shall be entered, will, etc., shall be recorded, when.

Art. 1907. [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.

Certified copy of record may be read in evidence. Ib. p. 95, §7.

Art. 1908. [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.

Will probated in another state or country may be filed and recorded in this state. Ib. §5.

Art. 1909. [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.

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Who are disqualified from being executors or administrators.....1910	Letters shall not be revoked, except upon application and citation.....1920
Where a will has been probated letters testamentary shall be granted.....1911	Where will is discovered after grant of administration1921
When administration shall be granted..1912	Executor of will proved in another state entitled to letters within this state, when1922
Administration shall not be granted, unless, etc.1913	Bond shall be required as in other cases.1923
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Where applicants are equally entitled...1915	Executor, etc., who has been removed shall not afterward be appointed, etc...1925
Certain persons entitled to letters may waive right in favor of another, how..1916	What facts must appear before granting letters testamentary1926
Letters revoked and granted to person having prior right.....1917	What facts must appear before grant of letters of administration1927
Letters revoked and granted to executor upon attaining lawful age.....1918	Order of court granting letters.....1928
Executor absent from state, etc., may qualify, within what time, etc.....1919	Grant of letters may be opposed, etc.....1929

Article 1910. [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.

Who are disqualified from being executors or administrators. (Act Aug. 9, 1876, p. 96, §10.)

Art. 1911. [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 1881.

When a will has been probated letters testamentary shall be granted. Ib, p. 95, §8.

Art. 1912. [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.

When administration shall be granted. Ib. §9.

Art. 1913. [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.

Administration shall not be granted, unless, etc.

Art. 1914. [1861] Letters testamentary or of administration shall be granted to persons who are qualified to act, in the following order:

Order in which letters shall be granted. Ib.

1. To the person named as executor in the will of the deceased.
2. To the surviving husband or wife.

P. D. 5508.

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.

Where applicants are equally entitled.
P. D. 5512.

Art. 1915. [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.

Certain persons entitled to letters may waive right in favor of another, how.

Art. 1916. [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.

Letters revoked and granted to person having prior right.
Ib. p. 96, §§13, 14.
P. D. 5518.

Art. 1917. [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 executor upon attaining lawful age.
Ib. p. 96, §11.

Art. 1918. [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.

Executor absent from the state, etc., may qualify within what time, etc.
Ib. p. 96, §12.

Art. 1919. [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.

Letters shall not be revoked except upon application and citation.

Art. 1920. [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.

Art. 1921. [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 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.

When will is discovered after grant of administration.
Ib. p. 97, §15.

Art. 1922. [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.

Executor of another state entitled to letters within this state, when.
Ib. p. 97, §16.
P. D. 5517.

Art. 1923. [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.

Bond shall be required as in other cases.
P. D. 5517.

Art. 1924. [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.

Further administration shall be granted, when.
Ib. p. 97, §18.

Art. 1925. [1872] Whenever any person has been removed from the executorship or administration of an estate, he shall not afterward be appointed administrator thereof.

Executor, etc., who has been removed, shall not afterward be appointed, etc.
Ib. p. 100, §23.

Art. 1926. [1873] Before granting letters testamentary it must appear to the court—

What facts must appear before granting letters testamentary.
Ib. p. 94, §2.

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. 1927. [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. 1928. [1875] When letters testamentary or of 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.

Grant of letters may be opposed, etc.

Art. 1929. [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.

CHAPTER SEVEN.

TEMPORARY ADMINISTRATION.

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Appointment shall cease to be of force, when.1933	List, etc., shall be acted upon by the court1937

County judge may appoint temporary administrator, when. (Act Aug. 9, 1876, p. 98, §20.)

Article 1930. [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.

Appointment may be made without application, etc. Ib. p. 98, §20.

Art. 1931. [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.

Art. 1932. [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. 1933. [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. 1934. [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. 1935. [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.

Art. 1936. [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, return of sales, exhibit and account shall be made. P. D. 5531.

Art. 1937. [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. List, etc., shall be acted upon by the court.

CHAPTER EIGHT.

OATH AND BOND OF EXECUTORS AND ADMINISTRATORS.

Article	Article		
Oath of executor or administrator with will annexed.....	1938	When new bond may be required.....	1949
Oath of administrator.....	1939	Duty of county judge to require new bond, when.....	1950
Oath of temporary administrator.....	1940	Any person interested in an estate may demand new bond.....	1951
Oath may be taken before any officer authorized to administer oaths.....	1941	Sureties may ask to be discharged, and for new bonds.....	1952
Bond of executors and administrators.....	1942	Citation to executor or administrator.....	1953
Form of bond.....	1943	Order requiring new bond.....	1954
Oath and bond, within what time.....	1944	After order requiring new bond, functions of executor, etc., suspended.....	1955
Bonds shall be filed and recorded.....	1945	Sureties discharged when new bond is approved.....	1956
Where will provides that no bond shall be required.....	1946	Bond shall not be void on first recovery, etc.....	1957
Bond of married woman.....	1947		
Bond of husband or wife, who is a minor.....	1948		

Oath of executor or administrator with will annexed. (Act Aug. 9, 1876, p. 100, §30.)

Article 1938. [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. 1939. [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. 1940. [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. 1941. [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. 1942. [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.

Form of bond. Ib. p. 101, §34.

Art. 1943. [1890] The following form, or the same in substance, may be used for the bonds of executors and administrators:

"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. 1944. [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. 1945. [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 recorded.
Ib. p. 101, §33.

Art. 1946. [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 1923, in which case bond is required, notwithstanding the will may provide to the contrary.

When will provides that no bond shall be required.
Ib. p. 101, §32.

Art. 1947. [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 married woman.
Ib. p. 101, §35.
P. D. 5571.

Art. 1948. [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 husband or wife who is a minor.
Ib. p. 101, §36.

Art. 1949. [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. 1950. [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. 1951. [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. 1952. [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. 1953. [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. 1954. [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. 1955. [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. 1956. [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. 1957. [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.

	Article		Article
Clerk shall issue letters, when.....	1958	Letters shall issue to each one qual-	1961
What constitutes letters.....	1959	ifying	1962
Letters and certificates of letters, evi-		Other letters may be issued, when.....	
dence	1960		

Article 1958. [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. Clerk shall issue letters, when. (Act Aug. 9, 1876, p. 97, §19.)

Art. 1959. [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. 1960. [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. 1961. [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. 1962. [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.....	1963	May be cited to make, etc.....	1974
Same subject	1964	Order requiring additional inventory, etc.	1975
Inventory and appraisal.....	1965	Erroneous inventory or list may be corrected	1976
Appraisal shall be sworn to.....	1966	New appraisal may be required.....	1977
List of claims	1967	Order for same.....	1978
Inventory and list shall be sworn to.....	1968	New appraisal in place of original.....	1979
Shall be returned within sixty days.....	1969	Shall be evidence, to what extent.....	1981
Court shall approve or disapprove.....	1970	Not more than one reappraisal.....	1980
Order of approval.....	1971	Where more than one executor, etc., qualifies, and some neglect to return inventory, etc.	1982
Order of disapproval.....	1972		
Duty of executor to make additional inventory	1973		

Article 1963. [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. Appointment of appraisers. (Act Aug. 9, 1876, p. 103, §43.)

Art. 1964. [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. 1965. [1912] Every executor or administrator shall, immediately after the issuance of the letters, make and file in the court a true and correct inventory of the real and personal estate of the decedent, and a list of the claims against the estate. Inventory and appraisal. Ib. p. 103, §44.

diately 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.

Appraisalment shall be sworn to.

Ib. p. 103, §44.

Art. 1966. [1913] The appraised value of each article of property shall be stated opposite such article in the inventory, and such appraisalment 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.

List of claims.

Ib. p. 103, §44.

Art. 1967. [1914] Such executor or administrator shall also make and attach to said 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 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. 1968. [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. 1969. [1916] The inventory, appraisalment 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. 1970. [1917] Upon the return of any such inventory, appraisalment 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. 1971. [1918] Should the inventory, appraisalment 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. 1972. [1919] Should the inventory, appraisalment 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, appraisalment 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. 1973. [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.

Art. 1974. [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.

May be cited to make, etc.
Ib. p. 103, §46.

Art. 1975. [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.

Order requiring additional inventory.
Ib. p. 103, §46.

Art. 1976. [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.

Erroneous inventory or list may be corrected.

Art. 1977. [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 appraisement should not be made.

New appraisement may be required.
Ib. p. 104, §48.

Art. 1978. [1925] Upon the hearing of such complaint, if the court be satisfied that such appraisement was manifestly unjust or erroneous, an order shall be entered upon the minutes appointing appraisers and requiring a new appraisement to be made and returned in like manner as original appraisements.

Order for same.
Ib.

Art. 1979. [1926] When any such new appraisement is made, returned and approved by the court, it shall stand in the place of the original appraisement of the same property.

New appraisement stands in place of original.
Ib. p. 104, §48.

Art. 1980. [1927] Not more than one reappraisement shall be made, but any person interested in the estate may contest the approval of any appraisement by filing his objections thereto in writing at any time before such appraisement has been approved by the court.

Not more than one reappraisement.
Ib.

Art. 1981. [1928] All inventories and appraisements 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.

Where more than one executor or administrator qualifies and some neglect to return inventory, etc. *Ib.* p. 98, §23.

Art. 1982. [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 appraisement 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.

CHAPTER ELEVEN.

CERTAIN RIGHTS, DUTIES AND POWERS OF EXECUTORS AND ADMINISTRATORS.

	Article
What care to take of property of estate	1983
Duty in regard to plantation, manufactory or business	1984
Action of executor, etc., in regard to plantation, etc., may be controlled by court	1985
Ordinary diligence shall be used to collect claims and recover property of estate	1986

	Article
Property may be purchased, compromises made, etc., under order of the court	1987
Power to release mortgages	1988
Acts of one co-executor or co-administrator valid	1989
Preceding article does not apply, when	1990

What care to take of property of estate. (Act Aug. 9, 1876, p. 104, §49.)

Article 1983. [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 tenable 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. 1984. [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. 1985. [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. 1986. [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.

Art. 1987. [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.

Property may be purchased, compromises made, etc., under order of the court.
Ib. p. 105, §54.
P. D. 5622.

Art. 1988. [1935] When a mortgagee dies his executor or administrator, on receipt of the amount due on the mortgage, is authorized to release such mortgage.

Power to release mortgage.
Ib. p. 105, §55.
P. D. 5638.

Art. 1989. [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.

Acts of one co-executor or co-administrator valid.

Art. 1990. [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.

Preceding article does not apply, when.

CHAPTER TWELVE.

ADMINISTRATION UNDER A WILL.

Article	Article
Directions in will to be executed, unless, etc.1991 Proceedings to annul directions in will.1992 Citation to executor, etc., in such case.1993 Order of the court in such case.1994 Testator may provide that no action be had in court, except probate of will, etc.1995 Creditor may sue executor in such case.1996 Executor without bond may be required to give bond, when.1997 Order requiring bond.1998 Bond in such case.1999 Should the executor fail to give required bond, etc.2000 Estate shall be partitioned and divided by court, when.2001 Heirs, etc., may be required to give bond, when.2002	Upon failure to give bond, estate shall be administered under direction of the court.2003 Bond shall be filed and recorded.2004 Creditor may sue on bond, etc.2005 Costs of such proceedings to be paid by whom.2006 Executor may sell property without order of court, when.2007 Personal property reserved from sale by will.2008 Administration under will same as in intestates' estates, except, etc.2009 Legatee or devisee may obtain order for delivery of legacy or bequest, when and how.2010 Naming an executor in a will does not release him from a debt, etc.2011

Article 1991. [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.

Proceedings to annul directions in will.

Art. 1992. [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.

Citation to executor, etc., in such case.

Art. 1993. [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.

Order of the court in such case.

Art. 1994. [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.

Testator may provide that no action be had in the court, except probate of will, etc. (Act Aug. 9, 1876, p. 124, §117.

Art. 1995. [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, appraisal and lists of claims of his estate.

Creditor may sue executor in such case. *Ib.* p. 124, §117.

Art. 1996. [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.

Executor without bond may be required to give bond, when. *Ib.* p. 124, §117.

Art. 1997. [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 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. 1998. [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 such 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. 1999. [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.

Art. 2000. [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.

Should executor fail to give required bond.
Ib. p. 125, §117.

Art. 2001. [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.

Estate may be partitioned and divided by court, when.
Ib. p. 125, §117.

Art. 2002. [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 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.

Heirs, etc., may be required to give bond, when.
Ib. p. 126, §123.

Art. 2003. [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.

Upon failure to give bond estate shall be administered under direction of the court.
Ib. p. 126, §123.

Art. 2004. [1951] If the obligation provided for in article 2002 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 2001, in which case the action therein provided for may be had.

Bond shall be filed and recorded.
Ib.

Art. 2005. [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.

Creditor may sue on bond, etc.
Ib.

Art. 2006. [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.
Ib.

Art. 2007. [1954] Whenever in a will power is given to an executor to sell any property of the testator, no order of the county

Executor may sell property without order of court, when, etc.
Ib. p. 113, §82.

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.

Personal property reserved from sale by will. *Ib.* p. 130, §146.

Art. 2008. [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.

Administration under will same as intestates' estates, except, etc.

Art. 2009. [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.

Legatee or devisee may obtain order for delivery of legacy or bequest, when and how. *Ib.* p. 110, §70.

Art. 2010. [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.

Naming an executor in a will does not release him from a debt, etc. *Ib.* p. 105, §53.

Art. 2011. [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.

CHAPTER THIRTEEN.

SUBSEQUENT EXECUTORS AND ADMINISTRATORS.

Subsequent administrator under a will shall succeed to rights of executor, except, etc.2012 Powers of subsequent administrators.....2013 How subsequent administration shall proceed2014	Article Same as to executor after administration2015 Inventories, etc., to be returned in one month2016
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Subsequent administrator under a will shall succeed to rights of executor, etc. (Act Aug. 9, 1876, p. 93, §24.)

Article 2012. [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.

Powers of subsequent administrator. *Ib.*

Art. 2013. [1960] Such administrator shall have power to make himself 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 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.

Art. 2014. [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 hereinbefore named.

How subsequent administration shall proceed.
Ib.

Art. 2015. [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.

Same as to executor after administration.
Ib.

Art. 2016. [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 appraisement 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.

Inventories, etc., to be returned in one month.
Ib. p. 98, §24.

CHAPTER FOURTEEN.

WITHDRAWING ESTATES FROM ADMINISTRATION.

Article	Article
Persons entitled to estate may cause executor or administrator to be cited, etc. 2017 May give bond to pay debts of estate, etc. 2018 Bond shall be filed and recorded and order of court thereon. 2019 Partition may be had of estate. 2020	Lien on property in hands of distributees 2021 Creditor whose claim may be allowed, etc., may sue on bond. 2022 Other creditor may sue and recover, to what extent. 2023 Creditor may also sue distributee. 2024 Order discharging executor or administrator, and closing estate. 2025

Article 2017. [1964] At any time after the return of the inventory, appraisement 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, appraisement 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.

Persons entitled to estate may cause executor or administrator to be cited, etc. (Act Aug. 9, 1876, p. 126, §124.)

Art. 2018. [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 appraisement 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.

May give bond to pay debts of estate, etc.
Ib.

Bond shall be filed and recorded and order of court thereon.
Ib.

Art. 2019. [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.

Partition may be had of estate.
Ib.

Art. 2020. [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.

Lien on property in hands of distributees.
Ib.

Art. 2021. [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.

Creditor whose claim has been allowed, etc., may sue on bond.
Ib.

Art. 2022. [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.

Other creditor may sue and recover, to what extent.
Ib.

Art. 2023. [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.

Creditor may also sue distributee.
Ib.

Art. 2024. [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.

Order discharging executor or administrator estate and closing

Art. 2025. [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.

CHAPTER FIFTEEN.

REMOVAL OF EXECUTORS AND ADMINISTRATORS.

	Article		Article
In what cases may be removed without notice	2026	Citation need not be served, when	2028
In what cases may be removed with notice	2027	Order of removal shall set forth cause	2029

In what cases may be removed without notice.
(Act Aug. 9, 1876, p. 99, §26.)

Article 2026. [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:

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. 2027. [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. (Acts of 1881, p. 31.)

1. When there shall appear sufficient grounds to believe that they have misapplied, 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.

2. 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.

3. When they fail to obey any order of the court consistent with this title, made in relation to the estate committed to their charge.

4. When an executor or administrator becomes of unsound mind, or from any other cause is incapable of performing the duties of his trust.

5. When they fail to make an annual exhibit fully showing the condition of the estate they represent, or fail to make to the court any exhibit they are required to make by law.

6. When they fail to make a final settlement for three years after the grant of letters, unless the time be extended by the court, after satisfactory showing being made under oath.

Art. 2028. [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. Citation need not be served, when. Ib. p. 99, §27.

Art. 2029. [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. Order of removal shall set forth cause. Ib. P. D. 5734.

CHAPTER SIXTEEN.

RESIGNATION OF EXECUTORS AND ADMINISTRATORS.

	Article		Article
Application to resign must be accompanied by exhibit and account.....	2030	Exhibit and account shall be examined, etc., by court.....	2033
Citation in such case.....	2031	Order approving exhibit and account.....	2034
How served.....	2032	Order of discharge.....	2035
		Shall not be discharged until, etc.....	2036

Article 2030. [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. Application to resign must be accompanied by exhibit and account. (Act Aug. 9, 1876, p. 100, §29.)

Art. 2031. [1978] Upon the filing of such application, exhibit and account, it shall be the duty of the clerk to make out a citation, Citation in such cases. Ib.

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. Art. 2032. [1979] Such citation shall be published for at least
 Ib. 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. Art. 2033. [1980] At the return term of such citation, or at some
 Ib. 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, restate such exhibit and account, and shall audit and settle the same.

Order approving exhibit and account. Art. 2034. [1981] If upon such examination and settlement it
 Ib. 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. Art. 2035. [1982] When such executor or administrator has delivered
 Ib. 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.

Shall not be discharged until, etc. Art. 2036. [1983] No executor or administrator shall be discharged
 until, etc. 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.

CHAPTER SEVENTEEN.

ALLOWANCE TO WIDOW AND MINOR CHILDREN.

Article	Article		
Allowance to widow and minor children to be made, when.....	2037	Widow or guardian may take property for allowance	2042
Amount of allowance, and with reference to what time	2038	Sale shall be ordered to raise allowance, when	2043
Allowance shall not be made, when.....	2039	Allowance to be paid in preference to other debts or charges, except, etc.	2044
Order fixing allowance.....	2040	Allowance apportioned, how.....	2045
To whom allowance shall be paid.....	2041		

Allowance to widow and minor children to be made, when. Article 2037. [1984] At the first regular term of the court after
 (Act Aug. 9, 1876, p. 105, §56.) 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.

Amount of allowance, and with reference to what time. Art. 2038. [1985] Such allowance shall be of an amount sufficient
 (Acts of 1887, p. 73.) 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 in-

testate, and such allowance to be fixed with regard to the facts existing during the first year after the death of such testator or intestate; provided, that in no case shall such allowance exceed one thousand dollars.

Art. 2039. [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. 2040. [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. 2041. [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. 2042. [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 returns.

Widow or guardian may take property for allowance.
Ib.

Art. 2043. [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.

Art. 2044. [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.

Allowance to be paid in preference to other debts or charges, except, etc.

Art. 2045. [1992] The allowance provided for in this chapter shall be paid as follows:

Allowance apportioned, how.

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.	2046	Exempt property, etc., not to be considered in ascertaining solvency.....	2056
Allowance in lieu of exempt articles.....	2047	When homestead shall not be partitioned.....	2057
Such allowance shall not exceed, what.....	2048	When homestead may be partitioned.....	2058
To whom the exempt property shall be delivered.....	2049	No distinction between separate and community homestead.....	2059
Allowance shall be paid, how.....	2050	Homestead not liable for debts, except, etc.....	2060
To whom allowance shall be paid.....	2051	Other exempt property, liable for what debts.....	2061
Sale to raise allowance, when.....	2052	Homestead rights of surviving husband.....	2062
Property upon which liens exist shall not be set aside, etc.....	2053		
Where estate proves to be solvent.....	2054		
Where estate proves to be insolvent.....	2055		

Court shall set apart exempt property, etc. (Act Aug. 9, 1876, p. 106, §57.)

Article 2046. [1993] At the first term of the court after an inventory, appraisalment 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. lb.

Art. 2047. [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. lb.

Art. 2048. [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. 2049. [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.

Allowance shall be paid, how. lb.

Art. 2050. [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 appraisalment, or a part thereof, or both, as they may select.

Art. 2051. [1998] Such allowance shall be paid by the executor or administrator in the following manner:

To whom allowance shall be paid.
Ib.

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. 2052. [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.

Art. 2053. [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. 2054. [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. 2055. [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. 2056. [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. 2057. [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.)

Art. 2058. [2005] When the widow dies or sells her interest in the homestead, or elects to no longer use or occupy the same as a

When homestead may be partitioned.

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. 2059. [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. 2060. [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. 2061. [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. 2062. [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.

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Provisions of this chapter do not apply to certain claims	2088
Claim shall not be allowed after order for partition	2089
Judgment shall not be rendered in favor of claim which has not been presented and rejected	2090

Notice of issuance of letters shall be given. (Act Aug. 9, 1876, p. 106, §58.)

Article 2063. [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 postoffice address of such executor or administrator, and shall be published once a week for four successive weeks.

Art. 2064. [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. 2065. [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. 2066. [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. 2067. [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. 2068. [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. 2069. [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. 2070. [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. 2071. When two or more persons are jointly bound for the payment of a debt or for any other purpose, upon the death of either of said persons so bound his estate may be charged by virtue of such obligation in the same manner as if the obligors had been bound severally as well as jointly.

Estate charged with joint obligation.
(Acts of 1887, p. 17.)

Art. 2072. [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

Affidavit to claim.
(Acts of 1876, p. 106, §61.)

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.

Claim lost or destroyed may be presented, how.

Art. 2073. [2019] If the claim has been lost or destroyed, the claimant, or some one for him, may make an affidavit to 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.

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

Art. 2074. [2020] The affidavit may be made before any officer authorized to administer oaths and give certificates thereof.

Allowance or approval without affidavit, void.

Art. 2075. [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.

Ib. §61. Memorandum of allowance or rejection. Ib. §63.

Art. 2076. [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.

Failure to indorse or annex memorandum. Ib. p. 108, §64.

Art. 2077. [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.

When claim is allowed, shall be presented for approval.

Art. 2078. [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.

Claim shall be acted upon by the court.

Art. 2079. [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.

Action of the court upon claims.

Art. 2080. [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 dat-

ed, 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. 2081. [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.

Any person interested in estate may oppose the approval of a claim.

Art. 2082. [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.

When claim has been rejected the owner may bring suit. Ib. §63.

Art. 2083. [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.

Judgment establishing claim shall be filed, etc. Ib.

Art. 2084. [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.

Cost of suit to be adjudged against claimant, when. Ib. p. 107, §62.

Art. 2085. [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. 2086. [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. 2087. [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. 2088. [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.

Claim shall not be allowed after order for partition.
Ib. §69.

Art. 2089. [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.

Judgment shall not be rendered in favor of claim which has not been presented and rejected.
P. D. 5683.

Art. 2090. [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.

CHAPTER TWENTY.

CLASSIFICATION AND PAYMENT OF CLAIMS.

	Article		Article
Classification of claims.....	2091	Order for the payment of claims in full..	2099
Claims to be paid pro rata, when.....	2092	Order for the payment of claims pro	
Order of payment of claims.....	2093	rata	2100
Claim shall not be paid, unless, etc.....	2094	Claims presented after twelve months,	
Owner of claim may obtain order for pay-		paid when	2101
ment, when.....	2095	Exhibit may be required, when.....	2102
Proceeds of sale of property on which		Liability of executor, etc., for failure to	
there is a mortgage or other lien.....	2096	pay money, etc.....	2103
Exhibit of condition of estate after		Executor or administrator shall not pur-	
twelve months.....	2097	chase claim against estate.....	2104
Penalty for failure to return exhibit...	2098		

Classification of claims.
(Act Aug. 9, 1876, p. 115, §88.)
P. D. 5674.

Article 2091. [2037] The claims against an estate shall be classed and have priority of payment as follows:

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. 2092. [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. 2093. [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.

Art. 2094. [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.

Claim shall not be paid, unless, etc.

Art. 2095. [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.

Owner of claim may obtain order for payment, when.
Ib.

Art. 2096. [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.

Proceeds of sale of property on which there is a mortgage or other lien.
Ib. p. 116, §90.

Art. 2097. [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.

Exhibit of condition of estate after twelve months.
Ib. p. 109, §66.

Art. 2098. [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. 2099. [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

Order for the payment of claims in full.
Ib. p. 116, §91.

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 claims allowed and approved or established by judgment.

Order for pay-
ment of
claims pro
rata.
Ib.

Art. 2100. [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.

Claims pre-
sented after
twelve
months, paid
when.
Ib. p. 116,
§92.

Art. 2101. [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.

Exhibit may
be required,
when, etc.
Ib. §93.

Art. 2102. [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.

Liability of
executor, etc.,
for failure to
pay money,
etc.
Ib. p. 119,
§101.

Art. 2103. [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.

Art. 2104. [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.

Executor or administrator shall not purchase claim against estate. *Ib.* p. 114, §86.

CHAPTER TWENTY-ONE.

HIRING AND RENTING.

Article	Article
Executor, etc., may hire out or rent property of estate.....2105	Note with security for hire or rent shall be taken.....2108
May obtain order of the court to hire out or rent the same.....2106	Report of hiring or renting.....2109
When, without order of court, responsible, etc.....2107	Action of court on report.....2110
	Person interested in estate may file complaint to have property hired or rented.2111

Article 2105. [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.

Executor, etc., may hire out or rent property of estate. (Act Aug. 9, 1876, p. 104, §51.)

Art. 2106. [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.

May obtain order of the court to hire out or rent same.

Art. 2107. [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.

When, without order of court, responsible, etc.

Art. 2108. [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

Note with security for hire or rent shall be taken.

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.

Report of hiring or renting.

Art. 2109. [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—

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.

Action of court on report.

Art. 2110. [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 order of the court entered upon the minutes, and shall be recorded in the minutes; but if disapproved by the court and 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.

Person interested in estate may file complaint to have property hired or rented.

Art. 2111. [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.

CHAPTER TWENTY-TWO.

SALES.

Article	Article
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2112	2127
No sale without order of court.....	May be sold for cash, etc., when.....
2113	2128
Sale may be on what term.....	Sale of real estate may be private, when.....
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Sales at public auction of personal property same as under execution.....	Twenty days' notice of sale to be given.....
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Purchaser shall give note and security, when, etc.....	What notice of sale shall state.....
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Duty of executor, etc., to apply for sale of real estate, when.....	Executor or administrator shall not purchase property of the estate.....
2122	2137
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2124	2139
Posting and return of citation.....	Notice of private sale need not be given, unless, etc.....
2125	2140
Action of the court on application.....	
2126	

Article 2112. [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. Advantage of estate to be considered in ordering sale. (Act Aug. 9, 1876, p. 112, §76.)

Art. 2113. [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. No sale without order of court.

Art. 2114. [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. Sale may be on what terms.

Art. 2115. [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. Sales at public auction same as under execution. Ib. p. 130, §148.

Art. 2116. [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. Purchaser shall give note and security, when.

Art. 2117. [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. Property liable to perish or be wasted shall be sold. Ib. p. 111, §74.

Art. 2118. [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. Sale of crops. Ib. p. 112, §75.

Duty of executor, etc., to sell personal property.
Ib. p. 130,
§145.

Art. 2119. [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. 2120. [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. 2121. [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. 2122. [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. 2123. [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.

Citation in such case.
Ib.

Art. 2124. [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.

Posting and return of citation.
Ib.

Art. 2125. [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.

Art. 2126. [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. 2127. [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.

Art. 2128. [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:

May be sold for cash, etc., when.
Ib.

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. 2129. [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. 2130. [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. 2131. [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. 2132. [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 ten a. m. and four p. m.

Time and place of sale.

Art. 2133. [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.

Sale may be ordered to be made in county where land is situated.
Ib. p. 113, §83.

Art. 2134. [2080] Whenever any property of an estate is ordered to be sold by the county judge, such order shall be entered on

Order of sale of property.
Ib. p. 112, §79.

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. 2135. [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 2097, 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. 2136. [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. 2137. [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. 2138. [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 readvertised 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. 2139. [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. 2140. [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.....2141	Conveyance of real estate.....2147
Requisites of report of sale.....2142	Conveyance of real estate shall not be delivered, until, etc.....2148
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Action of court on report of sale.....2144	Note holds vendor's lien.....2150
Sale shall be set aside, when.....2145	
Conveyance of property sold.....2146	

Article 2141. [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.

Sales shall be reported in thirty days. (Act Aug. 9, 1876, p. 113, §85.)

Art. 2142. [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—

Requisites of report of sale.

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. 2143. [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. 2144. [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 the 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. 2145. [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. 2146. [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, §85.

Art. 2147. [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.

Conveyance of real estate shall not be delivered until, etc. *Ib.* p. 113, §87.

Art. 2148. [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 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. *Ib.*

Art. 2149. [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. *Ib.*

Art. 2150. [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.....	2151	Action of the court on complaint.....	2152
		Conveyance under this chapter.....	2153

Proceedings to enforce specific performance of bond, etc. (Act Aug. 9, 1876, p. 108, §65.)

Article 2151. [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. *Ib.*

Art. 2152. [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 a 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. 2153. [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 per-

son 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.....	New appraisal of property, when.....
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Executor, etc., shall also be cited.....	Court may order sale, when.....
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2158	2178
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Shall appoint guardians for minors, etc.....	To whom property shall be delivered.....
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Where estate consists of money or debts only.....	Surviving husband or wife may have partition of common property.....
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Report of commissioners when division is made.....	Expenses of partition to be paid by whom.....
2168	2188
Action of court upon report of commissioners.....	Court may appoint another guardian, etc., when, etc.....
2169	2189
Property incapable of division to be specially reported.....	
2170	
Distributee may pay appraised value and take property incapable of division.....	
2171	
May take it on credit, when.....	
2172	
Decree of court in such cases vesting title.....	
2173	

Article 2154. [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. 2155. [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. Ib.

Art. 2156. [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. Ib.

Executor, etc., shall also be cited, etc.

Art. 2157. [2102] When the application is made by any other person than the executor or administrator of the estate, such executor or administrator shall 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.

Application may be made, when.
Ib. p. 117, §94.

Art. 2158. [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 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. 2159. [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 herein-after provided.

Court shall ascertain, what facts.
Ib. p. 120, §103.

Art. 2160. [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. 2161. [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 are 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. 2162. [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.

Art. 2163. [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.

Where estate consists of money or debts only.
Ib.

Art. 2164. [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.

Court shall appoint commissioners, when.
Ib.

Art. 2165. [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.

Writ of partition shall issue.
Ib.

Art. 2166. [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. 2167. [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.

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.

Ib. p. 121, §104.

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. 2168. [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, §106.

Art. 2169. [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

Action of court upon report of commissioners.
Ib.

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.

Property incapable of division to be specially reported.
Ib. p. 121, §105

Art. 2170. [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.

Distributees may pay appraised value and take property incapable of division.
Ib.

Art. 2171. [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.

May take it on credit, when.
Ib.

Art. 2172. [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 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. 2173. [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. 2174. [2119] If any of the distributees shall file in this court his exception to the appraisement 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 appraisement is unjust or erroneous, shall order a new appraisement of such property to be made, and shall appoint three or more disinterested citizens of the county to make such new appraisement, as in other cases of appraisement.

If no distributee take property, it shall be sold, etc.
Ib.

Art. 2175. [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.

Distributees purchasing at sale shall pay only the excess of his share.
Ib.

Art. 2176. [2121] At any such sale, if any distributee shall bid off any of the 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. 122, §107.

Art. 2177. [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.

Art. 2178. [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.

If property is not sold, commissioners in county where it is situated shall be appointed, etc. Ib.

Art. 2179. [2124] In all cases where commissioners to make partition are appointed under this chapter the report of a majority of them shall be sufficient.

Majority of commissioners may act. Ib. p. 123, §109.

Art. 2180. [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.

Court shall order executor or administrator to deliver property, when. Ib. §113.

Art. 2181. [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; and if any distributee be a minor and reside in any other than this state, and the guardianship of such minor or minors may be or has been granted in the state where such minor or minors reside, it shall be lawful for the executor or administrator in this state to settle with and pay or deliver over to such guardian any and all estate in his hands, which shall be as good and valid as if the guardianship had been granted in this state; provided, said guardian before he receives such estate shall make and enter into a bond as guardian in the matter of the guardianship so pending, conditioned and for the amount prescribed by the court having jurisdiction of such guardianship; and provided further, that he shall produce to the court of the county wherein administration has been or may be granted in this state a certified copy of the bond so given and of the record of his appointment as guardian, with certificates from the clerk and judge of the court in which said guardianship is pending that said appointment and bond are in due and legal form under the laws of the said state; also a copy of his bond as guardian; and if the court shall be satisfied that said guardian has been legally appointed and otherwise complied with the requirements herein, such court shall order to be recorded in the clerk's office of the county court, which, when recorded, shall entitle the guardian to settle for the amount due his ward.

To whom property shall be delivered. Ib.; amend. 1895, p. 150.

Art. 2182. [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

Damages for neglect to deliver property, etc. Ib.

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.

Surviving husband or wife may have partition of common property.
Ib. p. 122, §108.

Art. 2183. [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, appraisal and list of the 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.

Action of court and bond in such case.
Ib.

Art. 2184. [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.

Lien upon property delivered, etc.
Ib.

Art. 2185. [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.

Common property shall be held by executor, etc., until, etc.
Ib.

Art. 2186. [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 there-to under the provisions of this title.

Joint owners with estate may have partition.
Ib. p. 123, §112.

Art. 2187. [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.

Expenses of partition to be paid, by whom.
Ib. §111.

Art. 2188. [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.

Court may appoint another guardian, etc., when.
Ib. §110.

Art. 2189. [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 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.

[See article 1875.]

Article	Article
Duty of executor to present account for final settlement, when.....2190	County judge may order other notice to be given.....2196
What the account shall show.....2191	Action of court upon account.....2197
What shall be sufficient under the preceding article.....2192	Partition of estate on hand shall be made.....2198
Executor, etc., may be cited to present such account.....2193	Executor, etc., shall be discharged, when.....2199
Citation shall issue.....2194	Order for discharge of executor, etc., when, etc.....2200
Service and return of citation.....2195	

Article 2190. [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.

Duty of executor, etc., to present account for final settlement, when. (Act Aug. 9, 1876, p. 117, §95.)

Art. 2191. [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 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.

What the account shall show.

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.

Art. 2192. [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 report of sales, 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.

What shall be sufficient under the preceding article.

Art. 2193. [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 inter-

Executor, etc., may be cited to present such account. lb.

ested 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.
Ib.

Art. 2194. [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. 2195. [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.

County judge
may order
other notice
to be given.
Ib.

Art. 2196. [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.

Action of
court upon
account.
Ib.

Art. 2197. [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.

Partition of
estate on hand
shall be made.
Ib.

Art. 2198. [2143] Upon a settlement of an estate, if there is any of the estate remaining in the hands of the executor and administrator, and the heirs, devisees or legatees of the estate, or their assignee, or either 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.

Executor, etc.,
shall be dis-
charged,
when.
Ib.

Art. 2199. [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.

Order for dis-
charge of ex-
ecutor, etc.,
when, etc.

Art. 2200. [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.

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. 2201	Penalty for neglect of such duty..... 2208
When those entitled to estate do not appear and claim, shall be paid to state treasurer..... 2202	Executor, etc., shall take receipt of treasurer, etc..... 2209
Property uncalled for shall be sold, etc. 2203	Distributees shall recover funds paid into treasury..... 2210
Executor, etc., shall make report..... 2204	Mode of recovery..... 2211
While property remains under control of executor, etc., distributees may have partition..... 2205	Citation to county or district attorney... 2212
Certified copy of order for payment to treasurer shall be sent by the clerk to the treasurer..... 2206	Proceedings in suit to recover funds... 2213
Clerk shall take certificate of postmaster, etc. 2207	Costs shall be paid by plaintiff..... 2214
	Penalty when executor, etc., fails to pay funds to treasurer..... 2215
	Treasurer may apply to county court to enforce payment, and duty of court in such case..... 2216
	Treasurer may also sue upon bond..... 2217
	Duty of county or district attorney to represent state..... 2218

Article 2201. [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.)

Art. 2202. [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.

When those entitled to estate do not appear and claim, shall be paid to state treasurer. Ib. §96.

Art. 2203. [2148] If in such case there shall be any property of the estate that has not been sold, or any debts due the estate 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.

Property uncalled for shall be sold, etc. Ib. p. 118, §96.

Art. 2204. [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.

Executor, etc., shall make report, etc.

While the property remains under control of executor, etc., distributees may have partition.
Ib.

Art. 2205. [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. 2206. [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. 2207. [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. 2208. [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. 2209. [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. 2210. [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.

Mode of recovery.
Ib.

Art. 2211. [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.

Citation to county or district attorney.

Art. 2212. [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.

Proceedings in suit to recover funds.

Art. 2213. [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.

Art. 2214. [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. 2215. [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. 2216. [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. 2217. [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. 2218. [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.....	2219
Where there is no child administration is not required.....	2220
Where there is a child survivor holds subject, etc.....	2221
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Surviving wife shall have same rights, etc.....	2236
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Persons entitled to estate may have partition, when.....	2238
Recovery of insane spouse stops action hereunder.....	2238a
Duty of guardians in such cases.....	2238b

Article 2219. [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 Community property liable for community debts, etc. (Act Aug. 9, 1876, p. 124, §115.)

of all the community debts allowed or paid in the settlement of such estates.

When there is no child, administration not required. (Amend. 1893, p. 89.)
P. D. 5498.

Art. 2220. [2165] Where the husband or wife dies intestate, or becomes insane, having 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 or guardianship of the estate of the insane wife or husband shall be necessary.

Where there is child, survivor holds subject, etc. (Amend. 1893, p. 89.)
Ib. p. 127, §116.
P. D. 4647.

Art. 2221. [2166] Where the wife dies or becomes insane, leaving a surviving husband and child, or children, the husband shall have the exclusive management, control and disposition of the community property in the same manner as during her lifetime, or sanity, and it shall not be necessary that the insane wife shall join in conveyances of such property, or her privy examination and acknowledgment be taken to such conveyances, subject, however, to the provisions of this chapter.

Application for community administration.
Ib.

Art. 2222. [2167] The husband shall, within four years after the death of the wife, or her being declared insane, as provided by law, 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, or that she has been declared insane by a court of competent jurisdiction, and the time and place of her death or of such declaration.
2. That she left a child or children, giving the names, sex, residence, and age of each child.
3. That there is a community estate between the deceased or insane 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. (Act 1876, p. 124.)

Art. 2223. [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. 2224. [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 appraisal of such community estate, and the husband shall attach thereto a list of all community debts due the estate, and such inventory, appraisal 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. 2225. [2170] The surviving husband shall at the same time he returns the inventory, appraisal 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 appraisal, 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.

Action of court upon inventory, etc.

Art. 2226. [2171] When any such inventory, appraisal, 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.

Art. 2227. [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. 2228. [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. 2229. [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. 2230. [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. 2231. [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 to 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. 2232. [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.

Art. 2233. [2178] But should it appear to the court from such exhibit or from other evidence that such estate has been improperly

Sureties on survivor's bond shall be cited, when.

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. 2234. [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. 2235. [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. *Ib.*; amend. 1893, p. 89. P. D. 4652.

Art. 2236. [2181] The wife may retain the exclusive management, control and disposition of the community property of herself and deceased or insane husband in the same manner, and subject to the same rights, rules and regulations as provided in the case of the husband, and until she shall, in the event of the death of the husband, marry again.

"Survivor," etc., applies alike to sane and insane persons. (Acts 1893, p. 89.)

Art. 2236a. The use of the words "survivor" or "surviving" in the above and foregoing articles of this chapter, where no other designation is given, shall be held to apply as well to a sane person representing an insane person.

Rights of wife cease when she marries again.

Art. 2237. [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. 2238. [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.

Recovery of insane spouse stops action hereunder. (Acts 1893, p. 89.)

Art. 2238a. Whenever such insane husband or wife shall have recovered sanity, then all action hereunder shall cease, and a report shall be made under oath of all transactions had and done under said proceedings, and said report shall be filed and recorded in the court where such proceedings were had, and with the other papers of the case.

Duty of guardians in such cases. *Ib.*

Art. 2238b. Persons now acting as guardians of the estate of persons of unsound mind, shall turn over the estates of their wards, where the wards shall be married persons, upon the qualification of the sane spouse, as provided in this chapter.

CHAPTER TWENTY-NINE.

TRANSFER OF ADMINISTRATION.

Article	Article		
Court shall transfer administration on application, when.....	2239	Administration of estate shall be proceeded with as if commenced originally in the county to which transfer is made	2243
Applicant shall pay fees due.....	2240	Administration in district court shall be transferred to county court.....	2244
Order of court for transfer.....	2241		
Duty of clerk to record all papers not recorded	2242		

Article 2239. [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.

Court shall transfer administration on application, when. (Act Aug. 9, 1876, p. 125, §118.)

Art. 2240. [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. 2241. [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. 2242. [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. 2243. [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. 2244. [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	2245
Commissions not allowed on certain moneys	2246
Shall be allowed expenses, etc.	2247
Account for expenses shall be filed and acted upon by the court.	2248
Costs of appraisers.	2249
Costs of commissioners.	2250
When costs shall be adjudged against executor, etc.	2251
Same subject.	2252
When application, etc., is defeated, costs shall be adjudged against applicant, etc.	2253
Security for costs may be required, when	2254

Commission allowed executors and administrators. (Act Aug. 9, 1876, p. 126, §121.)

Article 2245. [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.

Commissions not allowed on certain moneys. Ib.

Art. 2246. [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.

Shall be allowed expenses, etc. Ib.

Art. 2247. [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.

Account for expenses shall be filed and acted upon by the court.

Art. 2248. [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 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. 2249. [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. 2250. [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. 2251. [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. 2252. [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. 2253. [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.

Art. 2254. [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.

Security for costs may be required, when.

CHAPTER THIRTY-ONE.

APPEALS TO THE DISTRICT COURT.

	Article	Article
Right of appeal.....	2255	Transcript to be transmitted, when, etc.....
Appeal bond.....	2256	Duty of district clerk who receives transcript, etc.....
Bond not required of executors, etc., unless, etc.....	2257	Appeals shall be tried de novo in regular order upon the docket.....
Affidavit that party is too poor to give bond.....	2258	Certified copy of judgment of district court to be transmitted to county court.....
Duty of county clerk to make and transmit transcript, etc.....	2259	

Article 2255. [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.

Right of appeal. (Act Aug. 9, 1876, p. 128, §130.)

Art. 2256. [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.

Appeal bond. Ib.

Art. 2257. [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. 2258. [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. 2259. [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.

Transcript to be transmitted, when, etc.
Ib. §132.

Art. 2260. [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.

Duty of district clerk who receives transcript, etc.

Art. 2261. [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.

Appeals shall be tried de novo in regular order upon the docket.

Art. 2262. [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.

P. D. 480.
(10 Texas, 471.)
Certified copy of judgment of district court to be transmitted to county court.

Art. 2263. [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.

TITLE XL.

Evidence.

CHAPTER ONE.

PERSONAL ATTENDANCE OF WITNESSES.

	Article		Article
Witness subpoenaed	2264	Witness refusing to testify.....	2263
Form of subpoena.....	2265	Privileged from arrest.....	2270
Service of.....	2266	Party may be examined as a witness....	2271
Witness shall attend, etc.....	2267	Interpreter may be summoned and ap-	
Fees of witness.....	2268	pointed	2272

Article 2264. [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.

Witnesses subpoenaed. (Act March 13, 1846, p. 363, §1.) P. D. 3719.

Art. 2265. [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.

Form of subpoena. Ib.

Art. 2266. [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.

Service of. (Act May 13, 1846, p. 363, §16.) P. D. 1434.

Art. 2267. [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.

Witness shall attend, etc. Ib. P. D. 3720.

Art. 2268. [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.

Fees of witnesses. Ib. P. D. 3724.

Witness refusing to testify.

Ib.
P. D. 3725.

Privileged from arrest.

Ib.
P. D. 3723.

Party may be examined as a witness.

(Act Feb. 15, 1858, p. 110, §3.)
P. D. 3754.

Interpreters may be summoned and appointed.

(Act May 13, 1846, p. 363, §98.)
P. D. 3761.

Art. 2269. [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. 2270. [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. 2271. [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.

Art. 2272. [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.

CHAPTER TWO.

DEPOSITIONS OF WITNESSES.

Article	Article
Depositions of witness may be taken, when	Refusing to answer may be attached..... 2283
Notice and service thereof.....	Execution of the commission..... 2284
When notice may be given by publication	Interpreter
When process was served by publication.....	Return of depositions..... 2286
When suit has not been commenced.....	Depositions opened
Cross-interrogatories	Either party may use depositions, when..... 2288
Commission to take deposition.....	Depositions not to be read, except, etc..... 2289
Requisites of	Objections to depositions..... 2290
Officers authorized to execute.....	Depositions to be read in evidence, subject, etc..... 2291
Witness to be summoned.....	Matters not responsive stricken out..... 2292

Depositions of witnesses may be taken, when.
(Act May 13, 1846, p. 363, §67.)
P. D. 3726.
(Acts of 1879, p. 226.)

Article 2273. [2218] Depositions of witnesses may be taken when the party desires to perpetuate the testimony of a witness, and 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; provided, 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.

Same subject.
(Acts of 1879, p. 126.)
Notice and service thereof.
(Acts of 1887, p. 27.)

Art. 2274. [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; and whenever the adverse party is a corporation or a joint stock association, service may be made upon the president, secretary or treasurer of such corporation or asso-

ciation, or upon the local agent representing such corporation or association in the county in which the suit is pending, or by leaving a copy of the notice and attached interrogatories at the principal office of such corporation or association during office hours.

Art. 2275. [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 all the persons entitled to claim by or through such deceased defendant 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 notice
may be given
by publica-
tion.
Ib. §79.
P. D. 3737.

Art. 2276. [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 process
was served
by publica-
tion.
(Act April 1,
1861, p. 26, §1.)
P. D. 3738.

Art. 2277. [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 insti-

When suit
has not been
commenced.
(Act April 15,
1874, p. 103,
§1.)
P. D. 6829b.

tution 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. 2278. [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. 2279. [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. 2280. [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 postoffice address.

Officers authorized to execute.
P. D. 3726,
3736.

Art. 2281. [2226] The commission shall be addressed to the following officers, either of whom may execute and return the same:

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.

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, any 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 charge 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.

Witness to be summoned.
Ib. §68.
P. D. 3727.

Art. 2282. [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.

Refusing to answer, may be attached.
Ib.

Art. 2283. [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.

Execution of the commission.
Ib. §69.
P. D. 3728.

Art. 2284. [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.

Art. 2285. [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. 2286. [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 postoffice shall indorse on them that he received them from the postoffice, 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 16,
1848, p. 106,
§16.)
P. D. 3729.

Art. 2287. [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. 2288. [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
lb. §76.
P. D. 3740.

Art. 2289. [2235] When a deposition shall have been filed in the court at least one entire day before the day on which the case is called for trial, no objection 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 commences; provided, however, that such objection shall be made and determined at the first term of the court after the deposition has been filed, and not thereafter. Objections to
depositions.
(Act May 13,
1846, p. 363,
§78; amend.
1893, p. 5.)
P. D. 3742.

Art. 2290. [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. Depositions to
be read in
evidence,
subject, etc.
(Act March 16,
1848, p. 106,
§17.)
P. D. 3733.

Art. 2291. [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. Matter not
responsive
stricken out.
(Act May 13,
1846, p. 363,
§73.)
P. D. 3732.

CHAPTER THREE.

DEPOSITIONS OF PARTIES.

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Party may take his own deposition.

Article 2292. [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. 2293. [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. Ib.

Art. 2294. [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 answer thereto, nor shall it be any objection to the interrogatories that they are leading in their character.

Taken and returned as other depositions. Ib.

Art. 2295. [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.

Art. 2296. [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.

Contradiction of. Ib. §4. P. D. 3755.

Refusal to answer, etc. Ib. §5. P. D. 3756.

Art. 2297. [2243] If the party interrogated refuses 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. 2298. [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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Article 2299. [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. 2300. [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. 2301. [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. 2302. [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. 2303. [2249] No person shall be incompetent to testify on account of his religious opinions, or for want of any religious belief.

Religious opinions, etc., do not disqualify. (Const., art. 1, §5.)

Art. 2304. [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. 2305. [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.

Copies of records of public officers and courts to be prima facie evidence.

Ib.
P. D. 3715.

Art. 2306. [2252] Copies of the records of all public officers and courts of this state, certified 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.

(Acts of 1881,
P. 71.)

Art. 2307. [2252a] The county surveyor of the several counties of this state shall record in a well-bound book all the surveys in the county or district for which he was elected, with plats thereof that he may make, whether private or official, and certified copies of such record under the official signature of the surveyor may be used in evidence in any of the courts of this state.

Copies and certificates from certain officers are evidence.
(Act March 20,
1848.)

P. D. 3806.

Art. 2308. [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 agriculture, 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 seal 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.

Notarial acts and copies thereof are evidence.
(Act June 24,
1876, p. 30, §9.)

P. D. 4637.

Art. 2309. [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.

In suits against delinquent officers, transcript from comptroller's office is evidence.
(Act Feb. 3,
1861, p. 14.)

P. D. 3704.

Art. 2310. [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.

Copies of certain instruments prior to 1837 are evidence.
(Act May 13,
1846.)

P. D. 3717.

Art. 2311. [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.

Recorded instruments admitted in evidence without proof, when.

Ib.
P. D. 3716.

Art. 2312. [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. 2313. [2257a] All abstracts of land titles or land abstract books to lands in this state compiled from the records of any county in this state prior to the year 1877, which said records were partially or wholly destroyed or lost from any cause during the month of March, 1876, shall hereafter be competent prima facie evidence of the truth of the data or memoranda therein contained and compiled prior to the year 1877, and shall be admissible in evidence in the courts of this state; provided, that the compiler of such abstracts of land titles or land title abstract books shall have made heretofore, or before offered in evidence, affidavit before some officer authorized at the time of making such affidavit to take acknowledgments to deeds in this state, and to the effect that said abstracts of land titles or land title abstract books were compiled by him from the records of the county prior to their destruction or loss, and that they contain a true and correct statement of the matters and things to which they relate; and provided also, that it shall be admissible to offer in evidence any testimony tending to discredit or substantiate the reliability of such abstract of land titles or land title abstract books or tending to show the compiler thereof to have been incompetent or unreliable, or competent and reliable; and provided further, that a copy of such abstract shall be filed in the papers of the cause in which it is sought to be used and notice given to the opposite party at least five days before the trial, and the same defenses may be made as if copies of the original record had been filed; provided further, that the party offering such abstracts of land titles or land title abstract books in evidence, shall himself or by his agent or attorney have made affidavit that the original instrument to which the said data or memoranda relates is not then on record, that he has made diligent search and inquiry for the same in places and from persons where and in whose possession it would most probably be found, and has been unable to find the same; that to his best knowledge and belief the same is lost or destroyed; and provided further, that the owner of said abstracts of land titles or of land title abstract books shall have filed with the county commissioners' court his application in writing (which may be granted or refused in the discretion of said court, and if refused this article shall not become of force as to said application so refused) for an order of said court admitting to record in said court the contract of the said owner in writing wherein said owner shall bind himself, his heirs and assigns as follows: That said owner, his heirs or assigns, will, whenever requested in writing, setting forth the data required by any party to any suit interested in intro-

Certain ab-
stracts of title
evidence,
when.
(Acts of 1891,
p. 136.)

ducing said abstracts of land titles or land title abstract books, produce the same without charge on the day demanded for introducing in evidence, and upon the trial of any cause in this state; provided, that if said owner, his heirs or assigns, are required to produce said abstracts of land titles or land title abstract books in courts of any other county than that to the lands of which said abstracts of land titles or land title abstract books pertain, they shall be, by the party at whose instance such production is required, reasonably compensated in advance for the time and expenses of the said owner, his heirs or assigns. And the said owner in said contract shall bind himself, his heirs and assigns to answer in full damages to any party damaged by the failure or default of the said owner, his heirs or assigns without good cause, to produce said abstracts of land titles or land title abstract books, data or memoranda, when demanded as herein provided. And said contract shall further stipulate that no charge shall ever be made by said owner, his heirs or assigns, in excess of one dollar for each instrument or remove in any title in the compilation of a complete abstract or title to the lands in the county to which said abstracts of land titles or land title abstract books pertain, and that said owner, his heirs and assigns will upon request and payment of the fees therefor by any person, either make, compile and certify, or cause to be made, compiled or certified, within a reasonable time, a complete abstract of title to any lands to which said abstracts of land titles or land title abstract books pertain; provided, that nothing herein contained shall ever be construed to any way effect or apply to any suit or suits pending in any of the courts of this state on the twelfth day of July, 1891; provided further, that the provisions of this article shall not apply if it can be shown by competent evidence that any such deeds were improperly recorded.

Certified copy of instrument sued on is evidence, when.
Ib.
P. D. 3718.

Art. 2314. [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.

Certified copies from heads of departments evidence.
(Act Aug. 11, 1870, p. 62.)
P. D. 6825.

Art. 2315. [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 or which may be hereafter instituted in this state, where the originals of such notes, bonds, mortgages, bills, accounts or other documents would be evidence.

Assessment or payment of taxes may be proven, how.
(Act Feb. 15, 1858.)
P. D. 3708.

Art. 2316. [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.

Rate of interest in this state presumed, unless, etc.
Ib.

Art. 2317. [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 allega-

tion 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.

Art. 2318. [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. 2319. [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.

Art. 2320. Transcribed records for new counties or for newly attached territory, as provided for by law, when properly verified and certified shall have all the force and effect in judicial proceedings in courts of this state as the original records.

Effect of transcribed records of new counties, etc. (Acts of 1879, p. 105.)

Art. 2321. [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. 2322. [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 party having such location or survey made had actual notice of the existence of such elder title before he made such location or survey.

Certain titles not evidence, unless, etc. (Act Oct. 20, 1866, p. 32.) P. D. 5825.

Art. 2323. [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 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 party resisting such claim shall, before an announcement of ready for trial in said cause, file a written denial, under oath, stating that such account is not just

Suit on sworn account. (Acts of 1883, p. 110.)

or true, in whole or in part, and if in part only, stating the items and particulars which are unjust; provided, that when such counter affidavit shall be filed on the day of the trial, the party claiming under such verified account shall have the right to continue such cause until the next term of court; when 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 XLI.

Execution

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Article 2324. [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. 377c.

Art. 2325. [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.

Art. 2326. [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 immedi-

Execution issued before adjournment, superseded, when.

ately issue a writ of supersedeas suspending all further proceedings under such execution.

When judgment shall become dormant. (Acts 1895, p. 2.)

Art. 2326a. If no execution is issued within twelve months after the rendition of a judgment in any court of record, 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.

Execution from justice's court.

Art. 2327. [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. 2328. [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. 2329. [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. 2330. [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. 2331. [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. 2332. [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. 2333. [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. 2334. [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. 2335. [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.

Art. 2336. [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. Execution for property shall issue.

Art. 2337. [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. To different counties.

Art. 2338. [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 six per cent, and shall have the following requisites: Requisites of an execution. (Const., art. 5, §12.) (Act June 4, 1873, p. 209, §§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. 2339. [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. 2340. [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 to do, or in case of false indorsement, he and his sureties shall be liable, on motion in the court from whence the execution is issued, three days' notice Indorsements by officer. (Act Jan. 27, 1842.) P. D. 3780.

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.

Execution levied on property of surety, when. (Act Feb. 5, 1858.)
P. D. 4786.

Art. 2341. [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.

On death, etc., of officers, enforced by successor.

Art. 2342. [2285] If the officer receiving an execution die or go out of office before the return of any execution, his successor or other officer authorized 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. 2343. [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. 2344. [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. 2345. [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. 2346. [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., cannot be levied on, when.

Art. 2347. [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. 2348. [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. 2349. [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.

Art. 2350. [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.

On stock running at large.

Art. 2351. [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.

Levy on shares of stock, etc. (Act March 13, 1875, p. 102.)

Art. 2352. [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.

Interest of partner.

Art. 2353. [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.

Goods pledged or mortgaged.

Art. 2354. [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. 2355. [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. 2356. [2299] The officer 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. lb.

Art. 2357. [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. 2358. [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. 2359. [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; where-

Forfeited delivery bond. lb. P. D. 3779.

upon, 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.

Real property sold, how.

Ib.

P. D. 3776.

Art. 2360. [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.

Sale of lands, etc., elsewhere than at court house door.

Art. 2361. [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.

Lots in a city or town, how sold.

Art. 2362. [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.

Lands not in a city, etc., sold in lots, when. (Act Feb. 22, 1875, p. 50.)

Art. 2363. [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 such 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.

Sale of lots shall cease, when.

Ib.

Art. 2364. [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.

Expenses of selling lots, how paid. Ib.

Art. 2365. [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 the defendant, and shall in no case constitute any additional cost in said case.

Notice of sale of real estate. (Act Jan. 27, 1842; amend. 1895, p. 168.)

Art. 2366. [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, and by delivering to the defendant in execution one copy of said notice of sale, whenever he resides in the county where the land is situated, and shall mail a similar notice to the attorney of record, if any, for such defendant in every case; and if such defendant resides out of the county where the land is situated, the officer shall mail to him a similar notice, directed to him at his postoffice, if known to such officer, and if his residence is not known and he has no attorney of record, the posting of the first three notices shall be sufficient; provided, that whenever real property shall be levied on by virtue of an execution, or shall be the subject of any order of sale or venditioni exponas, if the defendant shall at any time prior to and not later than five days after receiving notice of the levy of any execution or issuance of order of sale or venditioni exponas, request the clerk or justice of the peace issuing such execution, order of sale or venditioni exponas, or the officer making the levy or holding the process, that notice of the sale be published in a newspaper, the same

shall be so published, if there be a newspaper published in the county that will publish the same for the compensation allowed herein; when said request is filed the officer shall, under the provisions of this article, publish notice of the sale in a newspaper published in the county for three consecutive weeks. Said notice shall contain a statement of the authority by virtue of which the sale is to be made, the time of levy, and the time and place of sale; it shall also contain a brief description of the property to be sold, and shall give the number of acres, original survey, locality in the county, and the name by which the land is most generally known, but it shall not be necessary for it to contain field notes. Publishers of newspapers shall receive for publishing said sales fifty cents per square for the first insertion and thirty cents per square for subsequent insertions, to be taxed and paid as other costs; in such publications ten lines shall constitute a square, and the body of no such advertisements shall be printed in larger type than brevier; provided, that on request of any defendant against whom judgment is rendered the clerk or justice of the peace shall note on the margin of the judgment record, "to be advertised by publication," and he shall note this fact on the execution, order of sale or venditioni exponas issued on such judgment, and notice of the sale of any real estate levied upon by virtue of such writ shall then be advertised in a newspaper as herein directed.

Art. 2367. Whenever real property shall be levied on by virtue of any execution, or shall be the subject of any order of sale or venditioni exponas, if the defendant shall, within five days after the levy of the execution, or the issuance of the order of sale or venditioni exponas, file with the officer making the levy or having the process a written request that notice of the sale be published in a newspaper, the same shall be so published, if there be a newspaper published in the county that will publish the same for the compensation allowed herein. When said request is filed the officer shall, under the provisions of this article, publish notice of the sale in a newspaper published in the county for three consecutive weeks. Said notice shall contain a statement of the authority by virtue of which the sale is to be made, the time of levy and the time and place of sale; it shall also contain a brief description of the property to be sold, and shall give the number of acres, original survey, locality in the county, and the name by which the land is most generally known, but it shall not be necessary for it to contain the field notes. Publishers of newspapers shall receive for publishing said sales seventy-five cents per square for the first insertion and fifty cents per square for subsequent insertions, to be taxed and paid as other costs; in such publications ten lines shall constitute a square, and the body of no such advertisement shall be printed in larger type than brevier.

Art. 2368. [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.

Art. 2369. [2310a] All sales of real estate made in this state under powers conferred by any deed of trust or other contract lien shall be made in the county in which such real estate is situated.

To be published in newspaper, when. (Acts of 1879, p. 152.)

"Court house door" defined.

Real estate sales under deeds of trust, how made. (Acts of 1889, p. 143.)

Notice shall be given as now required in judicial sales, and such sales shall be made at public vendue, between the hours of ten o'clock a. m. and four o'clock p. m. of the first Tuesday in any month; provided, that when such real estate is situated in an unorganized county such sale shall be made in the county to which such unorganized county is attached for judicial purposes, and where such real estate is situated in two or more counties the sale may be made in any county where any part of the real estate is situated, after notice as required in judicial sales has been given in every county in which any part of such real estate is situated.

Sale of personal property.
(Act Jan. 27, 1842.)
P. D. 3776.

Art. 2370. [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. 2371. [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. 2372. [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. 2373. [2314] When a levy is made upon horses, mules, jacks, jennets, horned cattle or hogs running at large in the range, under article 2350 of this title, 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. 2374. [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. 2375. [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.

Deeds to the state in usual form.
(Acts of 1879, p. 9.)

Art. 2376. [2316a] In all cases where property is purchased by the state, under article 291 of the Revised Civil Statutes, the officer selling the same shall execute and deliver to the state a deed of conveyance to the same, such as is prescribed for individuals in similar cases.

Conveyance made after death of purchaser.

Art. 2377. [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.

Purchaser deemed innocent.

Art. 2378. [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.

Art. 2379. [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. 2380. [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 not purchase.

Art. 2381. [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. 2382. [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 readvertise and sell the same as in the first instance.

Re-sale of property.
Ib.
P. D. 3787.

Art. 2383. [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. 2384. [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. 2385. [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. 2386. [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. 2387. [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. 2388. [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 of the officer, the surplus shall be immediately paid over to the defendant, his agent or attorney.

Surplus to be paid to defendant.
Ib.
P. D. 3777.

Return of execution.

Art. 2389. [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. 2390. [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. 2391. [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. 2392. [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. 2393. [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. 2394. [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 on his official bond.

TITLE XLII.

Exemptions.

CHAPTER ONE.

PROPERTY EXEMPT FROM FORCED SALE.

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Article 2395. [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:

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. 2396. [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.

Art. 2397. [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:

1. A lot or lots in a cemetery, held for the purpose of sepulture.
2. All wearing apparel.

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.

"Homestead" defined. (Const., art. 16, §51.)

Property exempt to others than families. (Act Aug. 15, 1837, p. 127, §2.) P. D. 6834. (Const., art. 16, §28.)

3. All tools, apparatus and books belonging to any trade or profession.

4. One horse, saddle and bridle.

5. Current wages for personal services.

Ferryboat, etc.
(Act Feb. 13,
1858, p. 21, §1.)
P. D. 3802.

Art. 2398. [2338] There shall be reserved to every ferryman exempt from attachment, execution and every other species of forced sale, except as hereinafter provided, one ferryboat, keel or flatboat, used as a ferryboat, 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.

Public prop-
erty of coun-
ties, cities and
towns exempt.
(Const., art.
9, §9.)

Art. 2399. [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 and 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
libraries.
(Act Aug. 15,
1870, p. 127, §2.)
P. D. 6834.

Art. 2400. [2340] All public libraries shall be exempt from attachment, execution and every other species of forced sale.

Homestead
exemption
does not ap-
ply, when.
(Const., art.
16, §50.)

Art. 2401. [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 over-
ride claims
for rent, etc.
(Act April 2,
1874, p. 56, §1.)

Art. 2402. [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 sixty-three, or to other debts which are secured by a lien on such property.

CHAPTER TWO.

EXCESS OVER HOMESTEAD, ETC., HOW SET APART AND
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Article 2403. [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 exempt 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.

Voluntary designation of homestead in the country. (Act May 7, 1873, p. 64. §1, et seq.) P. D. 6394a et seq.

• Art. 2404. [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.

Mode of setting it apart.

Art. 2405. [2345] Such instrument shall be signed by the party and acknowledged or proved 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.

Instrument to be recorded, etc.

Art. 2406. [2346] Where the owner of such a homestead, part of a larger tract, as is described in article 2403, 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. 2407. [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 to do so 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. 2408. [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.

- Service of notice.
Ib. Art. 2409. [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.
- Return of service.
Ib. Art. 2410. [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 prima facie evidence.
Ib. Art. 2411. [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.
- Defendant may designate his homestead.
Ib. Art. 2412. [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.
- Mode of making designation by defendant.
Ib. Art. 2413. [2353] The designation and setting apart so made by the defendant shall be such as is required by articles 2404 and 2405.
- Designation to be recorded.
Ib. Art. 2414. [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.
- Effect of, when made by defendant.
Ib. Art. 2415. [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.
- Defendant failing, officer to appoint commissioners
Ib. Art. 2416. [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.
- Commissioners to designate homestead.
Ib. Art. 2417. [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.
- Requisites of designation by commissioners.
Ib. Art. 2418. [2358] The designation of the homestead by such commissioners shall contain all the requisites prescribed for a designation and setting 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.
Ib. Art. 2419. [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 thereof, shall have the same effect as if the defendant had made the same under the provisions of this chapter.
- Effect of.
Ib.

Art. 2420. [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—

Sheriff's
return.
Ib.

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 when said acts were done, and such return shall be prima facie evidence of the facts therein stated.

Art. 2421. [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.

Compensation
of commis-
sioners and
surveyor.
Ib.

Art. 2422. [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 of clerk,
etc.
Ib.

Art. 2423. [2363] Such fees and expenses shall be taxed as part of the costs of the execution against the defendant and collected as other costs.

Fees, etc.,
taxed as costs.
Ib.

Art. 2424. [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.

Excess to be
sold.
Ib.

Art. 2425. [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 2404 and 2405, but such change shall not impair the rights of parties acquired prior to such change.

Defendant
may change,
etc., but, etc.

Art. 2426. [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 now 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.

Provisions of
this chapter
cumulative.
Ib.

Art. 2427. [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 fails 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.

Personal prop-
erty may be
designated,
etc.

TITLE XLIII.

Express Companies.

[For duties of railroads to and remedies for failure to perform, see "Railroads."]

	Article		Article
Express companies declared common carriers, and duties defined.....	2428	Penalties against, and railroad commission to enforce.....	2430
Railroad commission to regulate rates, etc.	2429	Powers of commission over, same as over railroads.....	2431

Express companies declared common carriers, and duties defined.
(Acts of 1891, p. 48.)

Article 2428. Every person, firm or corporation which shall do the business of an express company, upon railroads or otherwise, in this state, by the carrying of any kind of property, money, papers, packages or other things, are hereby declared to be common carriers, and shall receive, safely carry and promptly deliver at the express office nearest destination every such article as may be tendered to them, and in the carriage of which they are engaged; provided, that no such company shall be compelled to carry any gunpowder, dynamite, kerosene, naphtha, gasoline, matches or other dangerous or inflammable oils, acids or materials, except under such regulations as may be prescribed by the railroad commission. It shall be unlawful for any person, firm or corporation so engaged to demand or receive for such services other than reasonable compensation.

Railroad commission to regulate rates, etc.

Art. 2429. The railroad commission of the state of Texas shall have power, and it shall be its duty, to fix and establish reasonable and just rates of charges for each class or kind of property, money, papers, packages and other things to be charged for and received by each express company on all such property, money, papers, packages and things which by the contract of carriage are to be transported by such express company between points wholly within this state, which rates or charges may be made to apply to all such companies, and may be changed or modified by said commission from time to time in such manner as may become necessary. Said commission shall have the same power to make and prescribe such rules and regulations for the government and control of such express companies as is or may be conferred upon said commission for the regulation of railroads.

Penalties against, and railroad commission to enforce.

Art. 2430. Every express company doing business in this state which shall demand or receive a greater compensation than that which may be prescribed and fixed by the said railroad commission for the transportation of any class or kind of property, money, papers, packages or things, shall be deemed guilty of extortion, and shall forfeit and pay to the state of Texas a sum not to exceed five hundred dollars for each offense; provided, that if it shall appear that such violation was not willful, said company shall have ten days to refund such overcharges or damages, in which case the penalty shall not be incurred. And the said commission shall have authority and it shall be its duty to sue for and recover the same in the same manner as may be prescribed by law for like suits against railroad companies.

Art. 2431. The said commission shall have authority, and it shall be its duty to call upon such express companies for reports, and investigate their books in the same manner as may be prescribed by law for the regulation of railroad companies, and the said commission shall have power and authority to institute suits, sue out such writs and process as may be applicable and authorized for the regulation of railroad companies. All laws, rules and regulations made and prescribed for the government and control of railroads, in so far as they are applicable, shall be of equal force and effect against all express companies.

Powers of
commission
over, same as
over railroads.

TITLE XLIV.

Factors and Commission Merchants.

	Article		Article
Factors, etc., prohibited from being interested in their own sales.....	2432	No charge allowed for mending, unless actually done.....	2434
Factors to render account of sales with particulars, under penalty.....	2433	Drawbacks, rebates, prohibited.....	2435

Factors, etc., prohibited from being interested in their own sales. (Act Feb. 11, 1860.)
P. D. 3803.

Article 2432. [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 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.

Factor to render account of sales and give particulars under penalty.
Ib.
P. D. 3804.

Art. 2433. [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.

No charge allowed for mending, etc., unless the same has been actually done.
Ib.
P. D. 3805.

Art. 2434. [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.

Drawbacks, rebates, etc., prohibited. (Const., art. 16, §25.)

Art. 2435. [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.

TITLE XLV.
Fees of Office.

CHAPTER ONE.

OF CERTAIN STATE OFFICERS.

	Article		Article
Certain state officers to furnish copies and certificates.....	2436	Of land commissioner.....	2441
Fees of such officers therefor.....	2437	Comptroller's fee for examination.....	2442
Shall not charge certain officers therefor.....	2438	Fees of commissioner of agriculture, insurance, etc.....	2443
Fees of state department.....	2439	Shall keep and render accounts quarterly.....	2444
Fees of attorney-general.....	2440		

Article 2436. [2372] It shall be the duty of the secretary of state, commissioner of the general land office, comptroller, treasurer, commissioner of agriculture, 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.

Secretary of state, commissioner general land office, and other officers to furnish copies and certificates. (Act March 20, 1848.)
P. D. 3806.

Art. 2437. [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:

Fees of such officers for copies and certificates.
Id.
P. D. 3807.

For copies of any paper, document, or record in their offices, in the English language, including certificate and seal, for each hundred words	\$ 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.....	25
For each translated copy of any paper, document, or record in their offices, including certificate and seal, for each hundred words	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.....	50

Art. 2438. [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.

Shall not charge officers of state for copies.
Id.
P. D. 3810.

Art. 2439. The secretary of state, besides other fees that may be prescribed by law, is authorized and required to charge for the use of the state the following fees: For each and every charter, amend-

Fees of state department. (Acts of 1883, P. 72.)

ment or supplement thereto of a private corporation created for the purpose of operating or constructing a railroad, magnetic telegraph line, or street railway, or express company, authorized or required by law to be recorded in said department, a fee of one hundred dollars, to be paid when said charter is filed; provided, that if the authorized capital stock of said corporation shall exceed one hundred thousand dollars, it shall be required to pay an additional fee of twenty-five dollars for each one hundred thousand dollars authorized capital stock, or fractional part thereof, after the first; for each and every charter, amendment or supplement thereto, of a private corporation intended for the support of public worship, any benevolent, charitable, educational, missionary, literary or scientific undertaking, the maintenance of a library, the promotion of painting, music or other fine arts, the encouragement of agriculture or horticulture, the maintenance of public parks and facilities for skating and other innocent sports, and the maintenance of a public cemetery, a fee of ten dollars, to be paid when the charter is filed; for each and every charter, amendment or supplement thereto, of a private corporation, created for any other purpose, intended for mutual profit or benefit, a fee of twenty-five dollars shall be paid when the said charter is filed for record; provided, that if the authorized capital stock of said corporation shall exceed ten thousand dollars, it shall be required to pay an additional fee of five dollars for each additional ten thousand dollars of its authorized capital stock, or fractional part thereof, after the first; for each commission to every officer, elected or appointed in this state, a fee of one dollar; and each and every officer elected or appointed in this state is required to apply for and receive his commission; provided, that the secretary of state shall not be required to forward copies of laws to, nor attest the authority of, any officer in this state who fails and refuses to take out his commission as required herein; for every official certificate, a fee of one dollar; for each warrant or requisition, a fee of two dollars; for each remission of fine or forfeiture, one dollar; for copies of any paper, document or record in his office, for each one hundred words fifteen cents; for each and every charter, amendment or supplement thereto, taken out under chapter fourteen, title twenty-one, a fee of one hundred dollars shall be paid to the secretary of state, for the use and benefit of the state, which shall be paid when the charter, amendment or supplement thereto is filed for record. Each foreign corporation shall pay fees as follows: If its capital stock be one hundred thousand dollars or less, a fee of twenty-five dollars to procure a permit; if its capital stock be more than one hundred thousand dollars, and less than five hundred thousand dollars, it shall pay a fee of fifty dollars; if its capital stock be five hundred thousand dollars, and less than one million dollars, it shall pay a fee of one hundred dollars; if its capital stock exceed one million dollars, it shall pay a fee of two hundred dollars. All fees mentioned in this article shall be paid in advance into the office of secretary of state, and shall be by him paid into the state treasury monthly.

(Acts of 1837,
p. 93.)

(Acts of 1839,
p. 87, §5.)

Fees of attorney-general.
(Act Aug. 23,
1876, p. 284,
§2.)

Art. 2440. [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. 2441. [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. (Act June 2, 1873, p. 176.) P. D. 6844a. (See acts 1879, ch. 55, for penalty for not paying fees and taking out patents—L.)

For certificates for three hundred and twenty acres of land or less	\$2 00
For certificates for over three hundred and twenty and up to and including six hundred and forty acres of land.	4 00
For certificates for over six hundred and forty and up to and including one thousand two hundred and eighty acres of land	5 00
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 each hour of.	1 00

Art. 2442. [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

Comptroller shall charge fee for examination. (Act March 15, 1875, p. 182, §2.)

.....\$ 50	
For each sealed certificate issued.	50

Art. 2443. [2378] The commissioner of agriculture, insurance, statistics and history shall charge and receive for the use of the state the following fees, to-wit:

Fees of commissioner of agriculture, insurance, statistics and history. (Act Aug. 21, 1876, p. 223, §12.)

For filing each declaration or certified copy of charter of insurance company	\$25 00
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 examination of companies under the law, the actual expenses incurred, and ten dollars a day, not to exceed	250 00

Shall keep fee book and render account of fees quarterly. (Act March 20, 1848.) P. D. 3808.

Art. 2444. [2379] It shall be the duty of the secretary of state, commissioner of the general land office, comptroller, treasurer, commissioner of agriculture, 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 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 COURTS OF CIVIL APPEALS.

Fees of clerks.....	Article 2445	Compensation for services not provided for	Article 2446
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Fees of clerks. (Act Aug. 23, 1876, p. 285, §4.)

Article 2445. [2380] The clerks of the supreme court and courts of civil appeals 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

Art. 2446. [2382] The clerks, for every service not herein provided for, shall receive such fees as may be allowed by the court, not to exceed the fees herein allowed for services requiring a like amount of labor. Compensation for services not provided for. ^{ib.}

CHAPTER THREE.

COUNTY OFFICERS.

	Article		Article
1. County Judge.		5. Justices of the Peace.	
Fees of county judge in probate.....	2447	Justices' fees.....	2463
Commissions of county judge.....	2448	6. Constables.	
Fees in lunacy case.....	2449	Constables' fees.....	2464
Compensation for ex officio service.....	2450	In district or county courts.....	2466
For testing weights and measures.....	2451	7. County Commissioners.	
Fees for hiring out county convicts.....	2452	Per diem.....	2466
2. Clerks of the District Court.		8. County Treasurer.	
Fees of the clerk of district court.....	2453	Commissions.....	2467
Fees in probate matters.....	2454	Commissions on school fund.....	2468
Fees for attorney's license.....	2455	Commissions limited.....	2469
Compensation for ex officio services.....	2456	9. District and County Surveyors.	
3. Clerks of the County Court.		District and county surveyors' fees.....	2470
Fees of clerks of county court.....	2457	10. Inspectors of Hides and Animals.	
Compensation for preserving records.....	2458	Fees of such inspectors.....	2471
Compensation for ex officio services.....	2459	11. Notaries Public.	
4. Sheriffs.		Fees of notaries public.....	2472
Sheriffs' fees.....	2460	12. Public Weighers.	
Sheriffs' fees for serving process from supreme court, etc.....	2461	Fees of public weighers.....	2473
Compensation for ex officio services.....	2462		

I. COUNTY JUDGE.

Article 2447. [2383] The county judge shall receive the following fees in probate matters: Fees of county judge in probate matters. (Act Aug. 23, 1876, p. 284, §6.)

Probating a will.....	\$2 00
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. 2448. [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. Commission allowed county judge. ^{ib.}

Fee in lunacy case.
 Ib.
 (Acts of 1879, ch. 81, p. 91.)

Art. 2449. [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.

Compensation for ex officio services.
 Ib.

Art. 2450. [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. 2451. [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. 2452. [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 repaid 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.
 (Acts of 1895, p. 170.)

Art. 2453. [2389] Clerks of the district court shall receive the following fees:

For copy of petition, including certificate and seal, each 100 words	\$0 20
Each writ of citation.....	75
Each copy of 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 impanelling a jury.....	35
Receiving and recording verdict of a jury.....	35
Assessing damages in each case not tried by a jury.....	50
Each commission to take depositions.....	75
Taking depositions, each one hundred words.....	15
Each order, judgment, or decree.....	75
Where 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, 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 appeal from the county court	1	00
Filing a record in a cause appealed to the district court		50
Transcribing, comparing and verifying record books of his office, payable out of the county treasury, upon warrants issued under order of the 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 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 the proceedings thereon	5	00
Filing and recording the declaration of intention to become a citizen of the United States	2	00
Issuing certificate of naturalization	2	50

Art. 2454. [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. 2455. [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. 2456. [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 of 1879, ch. 81, p. 92.)

III. CLERKS OF THE COUNTY COURT.

Art. 2457. [2393] Clerks of the county court shall receive the following fees: Fees of clerks of county court. Ib. §9. (Act Aug. 23, 1876, p. 301, §26.)

Filing each paper	\$0	05
Issuing notices, including copies for posting or publication		75
Docketing each application, complaint, petition or proceeding, to be charged but once		10
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
(Acts of 1889, p. 81.)	For recording attachments and returns, the same fees allowed for recording deeds.	
(Acts of 1879, p. 134.)	For filing and recording chattel mortgage deposited.....	25
	For entering satisfaction of chattel mortgage.....	25
R. S.	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
(Acts of 1879, p. 105.)	Transcribing records for new counties and added territory, 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 commissioner's 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

Art. 2458. [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 preserving the records, etc.
(Act Aug. 23, 1876, p. 287, §9.)

Art. 2459. [2395] For all ex officio services in relation to roads, bridges and ferries, issuing jury scrip, county warrants, and taking receipts therefor, services in habeas corpus cases, making out bar dockets, keeping county convict book, keeping record of trust funds, filing and docketing all papers for commissioners' court, keeping road overseer's book and list of hands, recording all collection returns of delinquent insolvents, and list of lands sold to individuals for taxes, recording county treasurers' reports, recording reports of justices of the peace, recording reports of animals slaughtered, and services in connection with all elections, and all other public services not otherwise provided for, to be paid upon the order of the commissioners' court out of the treasury. The clerk shall receive the sum of not less than ten dollars nor more than twenty-five dollars per annum for each one thousand inhabitants of his county; provided, that the total amount paid the clerk in any one year shall not be less than fifty nor more than five hundred dollars, said amount to be paid quarterly. 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.

Compensation for ex officio services.
(Acts of 1881, p. 99.)

IV. SHERIFFS.

Art. 2460. [2396] Sheriffs shall receive the following fees:

Serving each original citation in a civil suit.....	\$1	50	Sheriffs' fees. (Act Aug. 23, 1876, p. 289, §11.) (Acts of 1879, ch. 81, pp. 92-3.)
Summoning each witness.....	50		
Levying and returning each writ of attachment or sequestration.....	2	50	
Copy of attachment writ and return for recording.....	1	00	(Acts of 1889, p. 80.)
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 a designated 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.

Sheriffs' fees for serving process from supreme court, etc. (Act March 9, 1875, p. 70, §3.) Compensation for ex officio services. Ib.

Art. 2461. [2397] Sheriffs shall be allowed for all process issued from the supreme court or courts of civil appeals, and served by them, the same fees as are allowed them for similar service upon process issued from the district court.

Art. 2462. [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.

Justices' fees. Ib. p. 291, §12.

Art. 2463. [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
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.

Art. 2464. [2400] Constables shall receive the following fees for services rendered in business connected with courts of justices of the peace: Constables' fees. Ib. p. 291, §13.

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	
Copy of attachment writ and return for recording.....	1 00	(Acts of 1889, p. 80.)
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. 2465. [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. 2466. [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 treasurers' commissions.
Ib. §15.

Art. 2467. [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 all moneys, other than school funds, 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; provided, however, he shall receive no commissions for receiving money from his predecessor nor for paying over money to his successor in office.

Commissions on school fund.
(Acts of 1891, p. 147.)

Art. 2468. The treasurers of the several counties shall be treasurers of the available public free school fund and also of the permanent county school fund for their respective counties. The treasurers of the several counties shall be allowed for receiving and disbursing the school funds one-half of one per cent for receiving, and one-half of one per cent for disbursing, said commissions to be paid out of the available school fund of the county; provided, no commissions shall be paid for receiving the balance transmitted to him by his predecessor, or for turning over the balance in his hands to his successor; and provided further, that he shall receive no commissions on money transferred.

Commissions shall not exceed \$2,000 annually.
Ib.

Art. 2469. [2405] The commissions allowed to any county treasurer shall not exceed two thousand dollars annually.

(Acts of 1879, ch. 69, p. 79.)

IX. DISTRICT AND COUNTY SURVEYORS.

District and county surveyors' fees.
Ib. §16.

Art. 2470. [2406] District and county surveyors shall receive the following fees:

(Acts of 1881, p. 71.)

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
For recording surveys and plats required in article 4087, for each one hundred words.....	20
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 tract 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. 2471. [2407] Inspectors of hides and animals for each county or district shall receive the following fees:	each	Fees of inspectors 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. 2472. [2408] Notaries public shall receive the following fees:	Fees of notaries public. (Act Aug. 23, 1876, p. 293, §18.)
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 hundred 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. 2473. [2409] Public weighers shall receive the following fees:	Fees of public weighers. (Act March 15, 1875, p. 162, §7.) (Acts of 1879, ch. 108, p. 117.)
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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.....	02

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 appellate courts.....	Certain officers shall keep list of fees posted, etc.....
Stationery, etc., for county officers.....	Fees shall not be demanded in advance, etc.....
No fees allowed on motions for security for costs, etc.....	Execution for costs.....
Judgment containing several orders, one fee only shall be charged.....	Bill of costs to accompany execution.....
Fees of officers for taking acknowledgments, etc.....	Execution shall issue on demand of person entitled to costs.....
Clerks are prohibited from acting as conveyancers, etc.....	Each party liable for costs incurred by him.....
Fees in suit to be taxed how.....	Preceding articles, etc., do not apply to executors, etc.....
No charge for copies, when.....	When cost execution not issuable.....
No fee for examinations.....	No fee for filing certain papers.....
Officers shall keep fee books.....	Any other fees of office.....
Fee bill shall be produced, etc.....	State's attorney fees in school land litigation.....
Penalty for demanding, etc., fees unlawfully.....	Defense attorney fees in such cases.....

Office rent, stationery, etc., to clerks of supreme court and courts of appeals. (Act Aug. 23, 1876, p. 285, §4.)

Stationery, etc., allowed certain county officers. (Acts of 1835, p. 112.)

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.

Article 2474. [2410] There shall be allowed to the clerks of the supreme court and courts of civil and criminal 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. 2475. [2411] There shall be allowed to county judges, clerks of the district and county courts, sheriffs and county treasurers, such books, stationery, including blank bail bonds and blank complaints, 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. And that such books and stationery as are necessary in their performance of their duties shall also be furnished justices of the peace by said commissioners' court.

Art. 2476. [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. 2477. [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. 2478. [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. 2479. [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.

Clerks are prohibited from acting as conveyancers, etc.
Ib. §9.

Art. 2480. [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 service shall be rendered, except where it is otherwise provided by law or adjudged by the court.

Fees in suits to be taxed against party cast, etc.
Ib. §20.

Art. 2481. [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.

No charge for copies of papers, when.
Ib.

Art. 2482. [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. 2483. [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. 2484. [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. 2485. [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. 2486. [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. 2487. [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.
Ib.

Art. 2488. [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.

Bill of costs shall accompany execution.
Ib.

Art. 2489. [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.

Execution shall issue on demand of person entitled to costs.

Art. 2490. [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.

Each party liable for costs incurred by him.

Art. 2491. [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.

Preceding articles, etc., do not apply to executors, etc.
Ib. §26.
(Acts of 1879, ch. 81, p. 33.)

Art. 2492. [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."

Execution for costs shall not issue, until, etc.

Art. 2493. [2429] No execution for costs shall issue in any case until after judgment rendered therefor by the court.

No fee allowed for filing certain papers.

Art. 2494. [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.

Any other fees of office.

Art. 2495. Any other fees of office not embraced within this title, but otherwise provided for, shall not be affected by the provisions hereof.

State's attorney fees in school land litigation.
(Act 1893, p. 29.)

Art. 2495a. District and county attorneys who have represented or may hereafter represent the state in suits for the recovery of interest and purchase money due the state on account of sales of school lands, made under the laws of 1879 and 1881, or for the forfeiture of said lands on account of non-payment of said interest and purchase money, shall be allowed a fee of ten dollars for each of such cases in which the state recovers judgment; said fees to be approved by the judge who tried the case or his successor in office, and certified by the clerk of the trial court, and when so approved and certified shall be paid out of any moneys in the treasury not otherwise appropriated; provided, that in cases where suits are filed by one district or county attorney and judgment obtained by his successor in office, the fee shall be equally divided between them.

Defense attorney fees in such cases.
Ib.

Art. 2495b. A fee of five dollars for every suit heretofore or hereafter brought be allowed attorneys appointed by the court to represent the defendant in all cases where the state recovered judgment and where the costs can not be made out of the defendant; said fee to be paid by the state upon the presentation of an account allowed by the district court trying said case, stating the number and style of the suit and that the state recovered therein, that the attorney was appointed and represented the defendant therein, and that the costs can not be recovered out of said defendant.

TITLE XLVI.

Fences.

[See "Stock Laws" and Penal Code.]

Article	Article
"Sufficient fence" defined.....2496	Unlawful removal of dividing fence....2501
Complaint and proceedings thereon....2497	Lawful removal of same.....2502
Stock may be impounded, when.....2498	Adjacent owner may be required to re-
Owner not liable, when.....2499	move fence, when.....2503
Liability for injuring stock.....2500	

Article 2496. [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, but it shall be unlawful for any persons whomsoever, by joining fences or otherwise, to build or maintain more than three miles, lineal measure, of fence running in the same general direction without a gateway in the same, which gateway must be at least eight feet wide, and shall not be locked.

"Sufficient fence" defined. (Act Feb. 5, 1840, p. 179.) P. D. 3838. P. C. arts. 685-6. (Acts of 1884, p. 37.)

Art. 2497. [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 has 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.

Complaint before justice of the peace, when made.

Art. 2498. [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.

Stock may be impounded, when. P. D. 6845.

Art. 2499. [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.

Owner of cattle, etc., not liable, when. P. D. 6845.

Art. 2500. [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.

Persons injuring stock, liable, when. P. D. 3840.

Unlawful to
remove ad-
joining fence
except, when
(Act March 17,
1887.)
(Act April 6,
1889, p. 45.)

Art. 2501. Hereafter it shall be unlawful for any person who is a joint owner of any separating or dividing fence, or who is in any manner interested in any fence attached to or connected with any fence owned or controlled by any other person, to remove the same except by mutual consent or as hereinafter provided.

Can not sepa-
rate fence,
except, how.
Ib.

Art. 2502. Any person who is the owner or part owner of any fences connected with or adjoined to any fences owned in part or in whole by any other person, shall have the right to withdraw or separate his fence or part of fence from the fence of any other person or persons in this state; but such person who desires to withdraw or separate such fence from the fence of any other person shall give notice in writing to such person, his agent, attorney, or lessee, of his intention to separate or withdraw his fence or part thereof for at least six months prior to the time of such intended withdrawal or separation.

Adjacent own-
ers required
to remove
fence, how.
Ib.

Art. 2503. Any person who is the owner of any fence wholly upon his own land to which the fence of another is adjoined or connected in any manner, may require the owner of any such fence to disconnect and withdraw the same back on his own land by first giving notice in writing, for at least six months, to such person, his agent, attorney, or lessee, to disconnect and withdraw his fence back on his own land.

TITLE XLVII.

Fiscal Year.

	Article		Article
Termination of fiscal year.....	2504	Reports to be printed.....	2506
Accounts to be closed and reports com- piled	2505	Legislators to be furnished with ten copies each	2507

Article 2504. [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. 2505. [2437] All officers who are required by law to report annually or biennially to the legislature or governor shall close their accounts on said date, and as soon thereafter as practicable shall prepare and compile their respective reports.

Accounts to be closed, and reports compiled. Ib. §1. P. D. 3864.

Art. 2506. [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. 2507. [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 XLVIII.

Fish, Oysters, Etc.

Article	Article
Fish and oyster commissioner.....2508 Qualifications of2509 His residence2510 Oath and bond.....2511 Seal2512 General duties and powers.....2513 Duties as inspector of fish.....2514 Shall keep record book; same competent evidence2515 Official report2516 Compensation of commissioner, etc.....2517 "Fish and oyster fund".....2518 Fines, etc., appropriated to general county fund2518a Fines, etc., otherwise appropriated.....2518b License fees appropriated.....2518c	Deputy commissioners; powers and duties2518d Same; reports of.....2518e Same; jurisdiction of.....2518f Same; oath and bond of.....2518g Same; qualifications and tenure of office.....2518h Fees of commissioner and deputies...2518i Commissioner responsible for deputies.....2518j License to fish; prerequisites to issue of2518k Private and public oyster beds defined.....2518l Location of oyster beds regulated; notice to be recorded.....2518m Owner of private location taxed.....2518n Riparian rights prescribed.....2518o Location limited to 640 acres, and foreign corporations excluded.....2518p

[Note.—The fish and oyster law, as enacted by the Twenty-fourth legislature, p. 170 et seq., repeals and substitutes the provisions of this title as embraced in the codification of 1893, being Articles 2508 to 2518, inclusive, these comprising the seining and netting, and the crab and shrimp sections of the Act of 1887, and the Acts of 1891.]

Fish and oyster commissioner.
(Act 1895, p. 70.)

Article 2508. The office of fish and oyster commissioner is hereby created, and the governor is hereby authorized to appoint a competent person as fish and oyster commissioner for the state of Texas, who shall be qualified under article 2509 to fill said office.

Qualifications of.
Ib.

Art. 2509. The person appointed to the office of fish and oyster commissioner shall be a citizen of the United States and a resident and taxpayer of this state. He must be familiar with the habits of fish and oysters and have some knowledge of navigation.

His residence.
Ib.

Art. 2510. The fish and oyster commissioner shall reside in some town or city on the coast of Texas during his term of office, which shall be for two years.

Oath and bond.
Ib.

Art. 2511. The fish and oyster commissioner shall file with the secretary of state a good and sufficient bond, to be approved by the secretary of state, in the sum of ten thousand dollars, with two or more good and sufficient sureties, conditioned that he will faithfully perform the duties of his office, and he will take the oath prescribed for sheriffs, and when he shall have filed said bond and taken said oath he shall enter upon the duties of 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 state or any person injured until the whole amount has been recovered.

Seal.
Ib.

Art. 2512. The said commissioner shall have a seal, a star with five points, with the words, "Fish and Oyster Commissioner of Texas."

General duties and powers.
Ib.

Art. 2513. The duties of the commissioner are the execution of the fish and oyster laws of this state; in the execution of these laws he shall have and exercise the power given to sheriffs by the laws of this state.

Art. 2514. It shall be the duty of the commissioner to inspect all fish, green turtle, terrapin and oysters that are caught for sale or shipment.

His duties as inspector of fish, etc.
Ib.

Art. 2515. The commissioner shall keep a record book, which shall be well bound, and in it he shall record:

Shall keep record book showing what competent as evidence.
Ib.

1. All applications for private oyster beds, and date of filing same.

2. When and how such applications were executed, whether the examinations were made by tongs, dredges, or otherwise.

3. Whether such applications were allowed or disallowed; if allowed, an accurate description of same; if disallowed, the reason for refusal.

4. All applications for seine or set net licenses; if granted, the number and length of such seine or nets; if not granted, the reason for refusal.

5. All applications for tong licenses; if granted, the number; if not granted, the reason for refusal.

6. All amounts received for fees and licenses, from whom received, and what disposition was made of such amounts.

7. All amounts of all fines collected, for what purposes collected, and what disposition was made of such amounts.

8. These records shall be public records and admitted as evidence, as prescribed in article 2306 [2252], Revised Civil Statutes of Texas.

Art. 2516. The commissioner shall make, upon the 30th day of June of each year, a report to the governor of the fish and oyster trade of the Texas coast. It shall contain:

Official report.
Ib.

1. The name and class of all boats engaged in the oyster and fish trade.

2. The number, acreage and place of location of all private oyster beds.

3. The number of seine and set net licenses issued during the year.

4. The number of tong licenses issued during the year.

5. The amounts for all fees received, and for what service.

6. The amounts of all fines collected during the year.

7. Observations and remarks.

[Note.—For penalty see Penal Code.]

Art. 2517. The fish and oyster commissioner shall for his services be allowed all fees for locating private oyster beds, all fees collected for licenses for seines, set nets, and tongs. He shall be allowed out of the fish and oyster fund of the state twenty dollars for seal and record book, and said seal and record book shall be the property of the state; provided, that the commissioner shall not in any event receive for his services a sum in excess of eighteen hundred dollars per annum; and the deputy fish and oyster commissioners shall receive for their services a sum not to exceed six hundred dollars per annum, to be paid out of the revenues for their counties, and any excess of that amount shall be paid over to the state fish and oyster fund, as provided in article 2518; provided, further, that the state shall not be liable in any sum for the services of such commissioner or any of his deputies.

Compensation of commissioner and deputy commissioners.
Ib.

Art. 2518. All the money derived by the state from fines for infraction of the fish and oyster laws, fees for licenses, and taxes on private oyster beds, shall be kept by the comptroller separate under the head of "Fish and Oyster Fund."

"Fish and oyster fund."
Ib.

Fines, etc.,
appropriated
to general
county fund.
Ib.

Art. 2518a. All moneys derived by counties from fines for infraction of the fish and oyster laws, fees, taxes, etc., shall go to the general fund of the county.

Fines, etc.,
otherwise ap-
propriated.
Ib.

Art. 2518b. Of all fines collected for infraction of the fish and oyster laws ten per cent shall go to the prosecuting attorney, and one-fourth shall go to the informer, and one-half of the residue shall go to the fish and oyster fund of the state, and the other half of the residue shall go to the county in which the case was tried.

License fees
appropriated.
Ib.

Art. 2518c. Out of the fees collected for licenses issued for seines, set nets, and tongs, the fish and oyster commissioner and his deputies shall be paid the amounts allowed them under article 2517, and the balance shall be divided equally, one-half to be paid into the state fish and oyster fund, as provided in article 2518, and the other half to be paid into the general fund of the county in which such licenses were issued.

Deputy com-
missioners;
powers and
duties of.
Ib.

Art. 2518d. The commissioner is authorized to appoint one or more deputy commissioners for each coast county in the state. Such deputy or deputies shall have and exercise the same powers and duties as the fish and oyster commissioner.

Reports of
deputy com-
missioners.
Ib.

Art. 2518e. Such deputy shall make a report by August first of each year of his official acts for the year ending June 30 prior to each report, which shall set forth and in detail such facts as are provided in article 2516.

Jurisdiction of
deputy com-
missioner.
Ib.

Art. 2518f. Each deputy fish and oyster commissioner shall exercise the duties of his office in and for the county from which he was appointed.

Oath and
bond of dep-
uty commis-
sioner.
Ib.

Art. 2518g. Before entering upon the duties of his office, each deputy fish and oyster commissioner shall file with the fish and oyster commissioner a good and sufficient bond, with two or more sureties, in the sum of one thousand dollars, and take the same oath of office as the fish and oyster commissioner, and said bond and oath shall be governed by the provisions of article 2511.

Qualifications
and tenure of
office of dep-
uty commis-
sioner.
Ib.

Art. 2518h. No persons shall hold the office of deputy commissioner who is not a citizen of the United States and a resident and taxpayer of the state and county in which he holds his office, and he shall hold his office at the pleasure of the fish and oyster commissioner.

Fees of com-
missioner.
Ib.

Art. 2518i. In making arrests, summoning witnesses and serving processes, the commissioner or his deputy shall be allowed the same fees and mileage as sheriffs, the same being charged as costs and collected the same as are sheriff's costs and fees.

Commissioner
responsible for
his deputies.
Ib.

Art. 2518j. The commissioner shall be responsible, on his bond, for the official acts of his deputies.

License
to fish;
prerequisites
to issue of.
Ib.

Art. 2518k. Any person wishing to engage in the business of fishing or catching green turtle or terrapin must make application in writing to the fish and oyster commissioner or his deputy for a license, stating under oath that he is a citizen of the United States and a resident and taxpayer of the state of Texas, and stating also the name and class of his boat, the number and length and class of nets to be used, and he shall receive a license authorizing such person to engage in such business. Such license must be signed by the fish and oyster commissioner or his deputy, and must be stamped with the seal of his office, and it shall state:

1. The name of applicant, and his place of residence.
2. The name, class and place of registry of his boat.
3. The number, length and class of nets to be used.
4. The date of issuance of such license.

Such license shall be good for all the purposes of this article for six months from the day of issuance of same, and for such license the applicant shall pay to the fish and oyster commissioner or his deputy the sum of five cents per fathom for every fathom of drag seine, and two and one-half cents per fathom for every fathom of set nets, and the float line shall be deemed the length of such drag seine or set net; and it shall be the duty of the fish and oyster commissioner or his deputy to measure such seine or nets, and attach securely to each one a metal tag with the letters "F. & O. C." stamped thereon.

[Note.—For breeding grounds for fish, green turtle, terrapin, etc., see Penal Code.]

Art. 2518l. Oyster beds shall be private and public. All those not designated as private shall be public. All natural oyster beds and oyster reefs in the navigable waters of the state shall be deemed public.

Private and public oyster beds defined.
Ib.

Art. 2518m. Any person who is a bona fide citizen of the United States and a resident and tax payer of the state of Texas, shall have the right of obtaining a location for planting oysters and making private oyster beds within the navigable waters of the state other than those mentioned in article 2518o, by making written application to the fish and oyster commissioner or his deputy, describing the location desired. A fee of ten dollars in cash must accompany such application. It shall then be the duty of the fish and oyster commissioner, or his deputy, to, as soon as practicable, thoroughly examine the location described with tongs, dredge, or in other efficient manner, and if the same be not a natural oyster bed or reef, and not exempted from location by any article of this chapter, he shall mark off a space not exceeding fifty acres in area by planting four buoys, one at each of the four corners, which buoys must not be less than twelve inches in diameter, and for which buoys and the labor of placing the same the locator must pay; and the locator must fasten securely to one or more of the buoys a notice of his location; and the fish and oyster commissioner, or his deputy, shall give to the locator a certificate signed by such commissioner, or his deputy, stamped with the seal of his office; such certificate shall show the date of application, date of survey, manner of marking, and a description by metes and bounds, with a reference to the points of the compass and natural or artificial objects by which the said location can be found and verified. At any time not exceeding sixty days after the date of such certificate of location, the locator must file the same with the county clerk of the county in which the location is situated, who shall record the same in a well-bound book kept for the purpose, and the original, with a certificate of registration, shall be returned to the owner or locator. The clerk shall receive for the recording of such certificate the same fees as for recording deeds. The original or certified copies of such certificate shall be admissible in evidence under the same rules governing the admission of deeds or certified copies thereof. Any person so locating, shall be protected in his possession thereof against trespass thereon, in like manner as freeholders are protected in their rights, so long as he complies with article 2518n.

Location of oyster beds regulated; notice to be recorded, etc.
Ib.

Art. 2518n. Any person who secures a location for a private oyster bed shall keep the corners marked by securely anchored buoys of not less than twelve inches in diameter; and he shall further pay to the state a tax of ten cents per acre for each year of the first five years he occupies such location and twenty-five cents per acre for

Owner of private location taxed, etc.
Ib.

each year after the first five years that he occupies such location; this tax shall be paid to the legal tax collector of the county in which the location is situated, and it shall be due on January first of each year, as other ad valorem taxes, and if not paid before March first of the same year the locator shall forfeit all rights to the location and the same shall revert to the state.

Riparian
rights pre-
scribed.
Ib.

Art. 2518o. When any creek, bayou, lake or cove shall be included within the metes and bounds of any original grant or location in this state, the lawful occupant of such grant or location shall have the exclusive right to use said creek, lake, bayou, or cove for gathering, planting or sowing oysters within the metes and bounds of the original grant or patent of said land. But if said creek, bayou, lake or cove is not included in the survey of said lands, then the exclusive rights of the riparian owner shall extend to the middle of said creek, bayou, lake or cove; provided, said creek, bayou, lake or cove be not more than two hundred yards in width, but if said creek, bayou, lake or cove be more than two hundred yards in width, then the riparian owner's right shall extend only one hundred yards from the shore. No person shall locate any water or ground covered with water for planting oysters along any bay shore in this state nearer than one hundred yards from the shore, which one hundred yards is declared to be the riparian right of the land owner for planting oysters. In determining such riparian right of any land owner the starting point must be at high water mark or where the land survey ceases, and measure out into the bay one hundred yards; provided, that should a natural oyster bed or reef be on this one hundred yards riparian reservation, the land owner shall have no exclusive right to the same.

Location lim-
ited and for-
eign corpora-
tions ex-
cluded.
Ib.

Art. 2518p. No person, firm, or corporation shall ever own, lease, or otherwise control more than six hundred and forty acres of land covered by water, the same being oyster location under this chapter, and within the navigable waters of this state, and any person, firm or corporation that now holds six hundred and forty acres of oyster location shall not be permitted hereafter to acquire, own, lease or otherwise control more; provided, that no corporation shall own or lease or control any such lands covered by water unless such corporation shall be duly incorporated under the laws of this state.

[Note.—For offenses against the fish and oyster law see Penal Code, Title XIII., Chapter 5.]

TITLE XLIX.

Forcible Entry and Detainer.

Article	Article		
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Docketing and trial.....	2528	Writ of restitution, etc.....	2541
Right of possession only issue.....	2529	Shall not bar action for trespass.....	2542
Trial may be postponed for cause.....	2530		
Impanelling jury and verdict.....	2531		

Article 2519. [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.

In what cases the action will lie. (Act Aug. 17, 1876, p. 155, §1.)

Art. 2520. [2441] A “forcible entry” or an entry where entry is not given by law within the meaning of this chapter is—

“Forcible entry” defined.

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.

Art. 2521. [2442] A person shall be adjudged guilty of forcible detainer also in the following cases:

Other cases of forcible detainer.

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. 2522. [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.

Citation.
Ib. §4.

Art. 2523. [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.

Requisites of
the complaint.
Ib.

Art. 2524. [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.

Service and
return of cita-
tion.
Ib.

Art. 2525. [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.

Precept for a
jury, and ser-
vice, etc.
Ib.

Art. 2526. [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.

Other jurors
may be sum-
moned, when.
Ib.

Art. 2527. [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.

Shall be docketed and tried as other cases, etc.
Ib.

Art. 2528. [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.

Right of pos-
session the
only issue.

Art. 2529. [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.

Trial may be
postponed for
cause.
Ib.

Art. 2530. [2451] For good cause shown, supported by affidavit by either party, the trial may be postponed for a time not exceeding six days.

Impanelling
the jury, and
verdict.
Ib.

Art. 2531. [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.

Art. 2532. [2453] If the jury finds 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 executions may issue therefor.

Judgment of the court, and writ, etc.
Ib.

Art. 2533. [2454] No writ of restitution shall issue until the expiration of two days from the rendition of the judgment.

Writ of restitution not to issue for two days.
Ib.

Art. 2534. [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 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.

May appeal, when and how.
Ib. p. 163, §21.

Art. 2535. [2456] The appeal bond made in the preceding article may be substantially as follows:
"The State of Texas,

Form of appeal bond.

"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.——."

Art. 2536. [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.

Duty of justice in case of appeal.

Art. 2537. [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.

Trial de novo.

Art. 2538. [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.

Damages may be proved, when.

Judgment by
default, when
lb.

Art. 2539. [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., ex-
cept, etc.

Art. 2540. [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 resti-
tution, etc., by
whom issued
and served.

Art. 2541. [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. 2542. [2463] The proceedings under a forcible entry, or forcible detainer, shall not bar an action for trespass, damages, waste, rent or mesne profits.

TITLE L.

Frauds and Fraudulent Conveyances.

	Article	Article
Written memorandum required to maintain certain actions.....	2543	Gift of goods, etc..... 2546
Conveyances to defraud creditors, etc., void	2544	Loan of chattels..... 2547
Voluntary conveyances	2545	Mortgage of chattels void, when..... 2548
		Reservation of title a mortgage, when.. 2549

Article 2543. [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:

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. 2544. [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.

Art. 2545. [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.

Art. 2546. [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.

Written memorandum required to maintain certain actions. (Act Jan. 18, 1846.) P. D. 3875.

Conveyance to defraud creditors, etc., void. P. D. 3876.

Voluntary conveyances. P. D. 3876-77.

Gift of goods, etc. P. D. 3876.

Loan of
chattels.
P. D. 3876.

Art. 2547. [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 pretended 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.

Chattel mort-
gage void,
when.
(Acts of 1879,
p. 60.)

Art. 2548. Every mortgage, deed of trust or other form of lien attempted to be given by the owner of any stock of goods, wares or merchandise daily exposed to sale, in parcels, in the regular course of the business of such merchandise, and contemplating a continuance of possession of said goods and control of said business, by sale of said goods by said owner, shall be deemed fraudulent and void.

Reservations
of title to per-
sonal property
a mortgage,
when.
(Acts of 1885,
p. 76.)

Art. 2549. All reservations of the title to or property in chattels as security for the purchase money thereof shall be held to be chattel mortgages, and shall, when possession is delivered to the vendee, be void as to creditors and bona fide purchasers, unless such reservations be in writing and registered as required of chattel mortgages; provided, that nothing in this article shall be construed to contravene the landlord and tenants act.

TITLE LI.

Guardian and Ward.

CHAPTER ONE.

GENERAL PROVISIONS.

Article	Article
Jurisdiction of county court.....2550	Provisions governing estates of decedents govern guardianships..... 2558
Jurisdiction of district court.....2551	Contest of proceedings..... 2559
Who are minors.....2552	Cases of guardianship shall be called at each term2560
Who are persons of unsound mind.....2553	Meaning of "term of court"..... 2561
Who is an habitual drunkard.....2554	Appeals, etc., may be taken under the rules, etc., provided by law.....2562
Record books of estates shall be used.....2555	
What papers shall be recorded.....2556	
Order, etc., of court shall be at a regular term, unless, etc.....2557	

Article 2550. [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. 2551. [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. 2552. [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. 175, §2.)

Art. 2553. [2472] Persons of unsound mind are idiots, lunatics or insane persons.

Who are persons of unsound mind. Ib. §3.

Art. 2554. [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. 2555. [2474] The record book 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. 2556. [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.

Orders, etc., of court shall be at regular term, unless, etc.

Art. 2557. [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.

Provisions, etc., governing estates of decedents govern guardian- ships, etc.

Art. 2558. [2477] The provisions, rules and regulations which govern estates of decedents shall apply to and govern such guardian- ships, whenever the same are applicable and not inconsistent with any of the provisions of this title.

Any person may contest proceedings. Ib. p. 170, §18.

Art. 2559. [2478] Any person has the right to appear and con- test the appointment of a particular person as guardian, or to con- test 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.

Case of guard- ianship shall be called at each term.

Art. 2560. [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 neces- sary, 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 perform- ance of their duties with reference to guardianships.

Meaning of "term of court."

Art. 2561. [2480] Whenever a term of the county court is men- tioned in this title, it is meant a term of such court held for the transaction of probate business.

Appeals, etc., may be taken under the rules provided by law.

Art. 2562. [2481] The judgments, orders, decrees and proceed- ings of the court in relation to guardianships may be appealed from to the district court by any person who may consider himself ag- grieved thereby, or the same may be revised and corrected by cer- tiorari, 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	2563	Proceedings for guardianship of orphan, commenced, where	2565
Where the parents reside in different counties	2564	Persons of unsound mind, etc.	2566
		Where a guardian has been appointed by will	2567

Guardianship of estate of minor shall be commenced where parents reside. (Act Aug. 18, 1876, p. 176, §19.)

Article 2563. [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.

Where parents reside in different coun- ties. Ib. §20.

Art. 2564. [2483] If the parents of the minor do not reside in the same county, the proceedings for such guardianship shall be com- menced in the county where the parent who has the custody of the minor resides.

Proceeding for guardian- ship of an or- phan, shall be commenced, where. Ib. §21.

Art. 2565. [2484] A proceeding for the appointment of a guard- ian 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. 2566. [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.

Persons of unsound mind and drunkards.

Art. 2567. [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.

Where a guardian has been appointed by will. (9 Texas, 109.)

CHAPTER THREE.

COMMENCEMENT OF PROCEEDINGS.

	Article
Commenced by written application.....	2568
Who may make application, and what the same shall contain.....	2569
Clerk shall issue citation, which shall state what	2570
Citation shall be served, how.....	2571

	Article
Return of citation.....	2572
Minor fourteen years old, or over, shall be personally cited.....	2573
County judge shall commence proceedings, when	2574

Article 2568. [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.

Commenced by written application. (Act Aug. 18, 1876, p. 177, §23.)

Art. 2569. [2488] The application may be made by any person, and it shall state—

Who may make application, and what the same shall contain. Ib. §24.

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. 2570. [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.

Clerk shall issue citation, which shall state, what.

Art. 2571. [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.

Citation shall be served, how.

Art. 2572. [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.

Return of citation.

Art. 2573. [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.

Minor 14 years old or over shall be personally cited. Ib. §27.

Art. 2574. [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.

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.....2575	Collateral kin entitled, when.....2581
Parents equally entitled, when.....2576	Where no one who is entitled applies, court shall appoint, etc.....2582
Surviving parent entitled to.....2577	Who entitled in case of persons of unsound mind, etc.....2583
Surviving parent may appoint guardian by will, etc.....2578	Court shall appoint, when.....2584
Who entitled to guardianship of orphans.....2579	Who are not qualified.....2585
Where ascendants are equally entitled.....2580	Minor fourteen years of age may select his guardian.....2586

Father entitled where parents live together. (Act Aug. 13, 1876, p. 175, §8.)

Article 2575. [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.

Parents equally entitled, when. Ib. §9.

Art. 2576. [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.

Surviving parent entitled. Ib. §10.

Art. 2577. [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 may appoint guardian by will, etc. Ib. §11.

Art. 2578. [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.

Who entitled to guardianship of orphans. Ib. §12.

Art. 2579. [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. 2580. [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. 2581. [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. 2582. [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. 2583. [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.

Art. 2584. [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. Court shall appoint proper person, when.

Art. 2585. [2504] The following persons shall not be appointed guardians: Who are not qualified to be guardians. Ib. §16.

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.

Art. 2586. [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. Minor 14 years of age may select his own guardian.

CHAPTER FIVE.

APPOINTMENT OF GUARDIANS.

	Article		Article
Court may appoint, when.....	2587	Guardian of minor continues in office, until, etc.	2593
What facts must appear before appointment is made.....	2588	Guardian of person of unsound mind, etc., continues in office, until, etc....	2594
Only one guardian of the person or estate shall be appointed, except.....	2589	Court may appoint receiver, when.....	2595
Order of appointment, requisites.....	2590	Guardianship of estate of non-resident minor	2596
Minor having guardian may select another, when	2591	Letters shall issue, when, and shall state, what	2597
Another guardian shall be appointed, when	2592		

Article 2587. [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. 2588. [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. 2589. [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.

Order of ap-
pointment
shall contain
what.

Art. 2590. [2509] The order of the court appointing a guardian shall be entered upon the minutes of the court, and shall specify—

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 the 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.

Minor having
guardian may
select another,
when.

Art. 2591. [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.

Another guar-
dian shall be
appointed,
when.

Art. 2592. [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.

Guardian of
minor contin-
ues in office,
until, etc.
(Act Aug. 18,
1876, p. 178,
§38.)
(Acts of 1876,
p. 175.)

Art. 2593. [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.

Art. 2594. 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.

Court may
appoint a re-
ceiver, when.
(Acts of 1885,
p. 81.)

Art. 2595. 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. If during the pendency of such receivership the wants of such minor person of unsound mind or habitual drunkard should require the use of the means of such estate for their subsistence, clothing or education, the county judge is hereby authorized, and it shall be his duty, upon application or without application, either in term time or in vacation, to appropriate by an order entered upon the minutes of his court, out of the effects of such estate, an amount sufficient for such purpose,

said amount to be paid by such receiver upon such claims for the subsistence, clothing or education as may have been presented to such county judge and approved, and by him ordered to be paid. If at any time the receiver shall have on hand any money belonging to such estate beyond what may be necessary for the present necessities of the beneficiary of said estate and the current expenses thereof, he may, under the direction of the county judge, loan said money for such length of time as said county judge may direct, for the highest legal rate of interest that can be obtained therefor, in the manner and upon the security and terms provided in article 2640, chapter nine, title fifty-one, of said Revised Civil Statutes.

Art. 2596. [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.

Guardianship of estate of non-resident minor. *Ib.* p. 176, §22.

Art. 2597. [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.

Letters shall issue, when, and shall state, what. (Act to adopt and establish R. C. S., passed Feb. 21, 1875.)

CHAPTER SIX.

OATH AND BOND OF GUARDIANS.

Article	Article
Oath of guardian.....2588	New bond may be required, etc.....2606
Bond of guardian of the person.....2599	Guardian shall cease to act as such, when.....2607
Bond of guardian of the estate.....2600	Surety may be relieved in same manner, etc.....2608
Two or more sureties required.....2601	Oath and bond to be presented within twenty days.....2609
Bond where same person is guardian of both person and estate.....2602	Oath and bond to be recorded, etc.....2610
No bond required when will, etc., has dispensed with it.....2603	Sureties released, when, etc.....2611
Bond of married woman as guardian.....2604	
Bond of father or mother under twenty-one years of age, valid.....2605	

Article 2598. [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.

Oath of guardian. (Act Aug. 13, 1876, p. 177, §35.)

Art. 2599. [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

Bond of guardian of the person. *Ib.* §31.

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.

Bond of guardian of the estate. (Act of 1895, p. 231.)

Art. 2600. [2519] The bond of the guardian of the estate of a ward shall be in 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; and it shall be the duty of such county judge to annually examine into the condition of the estate of the ward and the solvency of such guardian's bond, and to require such guardian at any time it may appear that such bond is not ample security to protect such estate and the interests of his ward, to execute another bond in accordance with law. And in such case he shall notify the guardian as in other cases; and should damage or loss result to the estate of any ward through the negligence of such county judge to perform the duties herein prescribed, such county judge shall be liable on his official bond, payable to such ward, an amount equal to his loss due to such negligence.

Two or more sureties required. (Act of 1876, p. 177, §32.)

Art. 2601. [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.

Bond where same person is guardian of both person and estate. Ib. §34.

Art. 2602. [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.

No bond required when will, etc., has dispensed with it. Ib. §33.

Art. 2603. [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.

Bond of married woman as guardian. Ib. §33.

Art. 2604. [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 father or mother under 21 years of age valid. Ib. §40.

Art. 2605. [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.

New bond may be required, etc.

Art. 2606. [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.

Guardian shall cease to act as such, when. Ib. §43.

Art. 2607. [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.

Art. 2608. [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. 2609. [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. 2610. [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 said court and safely preserved. Oaths and bonds shall be recorded.

Art. 2611. [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.

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Additional inventory, when.....2616	

Article 2612. [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. Inventory shall be returned in 30 days, etc. (Act Aug. 18, 1876, p. 179, §50.)

Art. 2613. [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— List of claims. Ib. §50.

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.

Art. 2614. [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 Affidavit of guardian to inventory, etc.

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 speci-
fied.
Ib. §52.

Art. 2615. [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. 2616. [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. 2617. [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 in-
ventory, etc.,
may be re-
quired, when.
Ib.

Art. 2618. [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.

Inventories,
etc., may be
corrected, etc.

Art. 2619. [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., evidence.
Ib.
P. D. 3900.

Art. 2620. [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.

CHAPTER EIGHT.

POWERS AND DUTIES OF GUARDIANS.

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	Guardian of estate shall pay to guardian of person, etc.....	
	Ward's education and maintenance.....	
	Property in common with others.....	
	Guardian shall not dispute ward's title, except, etc.....	

Article 2621. [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. 2622. [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. 2623. [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. 2624. [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. §78.

Art. 2625. [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. 2626. [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. 2627. [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.

Art. 2628. [2547] The guardian of the estate may receive property in payment 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. May take property for debt due ward, when. Ib. §92.

Art. 2629. [2548] When different persons have the guardianship of the person 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 Guardian of estate shall pay to guardian of person, etc. Ib. §93.

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. 2630. [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. 2631. [2550] If the ward holds or owns any property in common, or as part owner with another person, the guardian shall be entitled to possession 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. 2632. [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 court.....	Notice of application to invest in real estate
2633	2642
Duty of guardian to rent out property, when, etc.	Order of court on such application.....
2634	2643
May rent improved property, other than, etc., without order.....	Contract of investment must be approved by the court.....
2635	2644
Court may order improved property rented	Title to be made to ward, and property to be inventoried, etc.....
2636	2645
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2637	2646
Guardian may be cited to show cause why he should not rent land.....	County judge shall see that fund is invested, etc.
2638	2647
Money shall be invested, how.....	Guardian's liability for interest.....
2639	2648
Note and mortgage shall be taken for money loaned	Shall not be personally responsible for money loaned, when.....
2640	2649
Investing money in real estate.....	Shall report renting to court.....
2641	2650

Guardian may carry on or rent farm, etc., under order of the court. (Act Aug. 13, 1876, p. 182, §86.)

Article 2633. [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 guardian to rent out property, when, etc. *Ib.* §87.

Art. 2634. [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.

May rent improved property other than, etc., without order.

Art. 2635. [2554] The guardian may rent the improved property of the ward, other than such property as is named in article 2633,

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.

Art. 2636. [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 interests of the ward.

Court may order improved property rented, etc.

Art. 2637. [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. 2638. [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 his 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. 2639. [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. 39.

Art. 2640. [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. 2641. [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. 2642. [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. 2643. [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. 2644. [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. 2645. [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. 2646. [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. 2647. [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. 2648. [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. 2649. [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. 2650. [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.

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Order of sale shall state, what.....	2660	ward's debts, how.....	2670
In what county real estate sold.....	2661	Renew evidence of debt, when.....	2671
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Article 2651. [2570] The guardian of the estate, as soon as practicable after appraisement, shall apply for an order of the court to sell at public or private sale, for cash or on 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. 2652. [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. 2653. [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. 2654. [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 accompanying 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. 2655. [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. 2656. [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

Citation upon application for sale of real estate. Ib. §104.

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.

No order of sale shall be made until citation has been served, etc.

Art. 2657. [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.

Ib.
Advantage of estate to be considered in ordering sale. Ib. §103.

Art. 2658. [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.

May be sold, on what terms. (Acts of 1892, S. S., p. 9.)

Art. 2659. [2578] A sale of real estate may be ordered by the court for cash, or for part cash and part credit, or wholly on credit, and if wholly on credit then for no longer period than 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. (Acts of 1876, p. 181, §100.)

Art. 2660. [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. 2661. [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.

Terms of sale. (Acts of 1892, S. S., p. 9.)

Art. 2662. [2581] The terms of sale of real estate when made partly on credit shall be that the cash payment be not less than one-fifth of the purchase price, and that the purchaser give his note or notes for the deferred payments maturing in equal annual amounts, the last note to mature not later than five years from date of deed, said notes to bear interest from date at a rate of interest of not less than six per centum, payable annually, and in default of the payment of principal or interest or any part thereof when due shall mature the whole debt; all notes for deferred payments to be secured by vendor's lien, retained in deed and notes upon the property sold, except where improved property or timbered lands are sold, in which exceptions the cash payment shall not be less than one-third of the appraised value of the property so sold. If a sale be made wholly for credit the purchaser's note must be secured by vendor's lien upon the property sold, and he shall also be required to furnish good personal security in addition to said lien, and the rate of interest shall not be lower than is provided in case of sales for part credit, and in every case the deferred payments shall be made payable in the county where the guardianship is pending.

Guardian shall not purchase property belonging to ward.

Art. 2663. [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.

Art. 2664. [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.

Bidder failing to comply with bid shall be liable, etc.

Art. 2665. [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.

Sale may be continued from day to day.

Art. 2666. [2585] The laws 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.

Guardians' sales governed by same rules as execution sales. (Acts of 1876, p. 181, §§82-111.)

Art. 2667. [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. 2668. [2587-2588] 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; and such sale 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 of mortgaged property to be made on such terms as court may direct. *Ib.* §§100, 107.

Art. 2669. [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.

Art. 2670. Should an estate in the hands of a guardian be involved in debt, and upon proper showing made to the court it shall appear that the guardian can pay off and discharge existing debts to the advantage of the estate by the hypothecation or mortgage of real estate at a lower rate of interest, or upon more advantageous terms than the old indebtedness, the court may, in its discretion, by order made for that purpose, allow the guardian to pay off and discharge existing debts by the execution of a good and sufficient mortgage or deed of trust upon real estate to secure the person furnishing the money with which to discharge said indebtedness; acts of guard-

Guardian authorized to re-hypothecate ward's indebtedness, when. (Acts of 1892, S. S., p. 10.)

ians under this article to be reported to the court and approved as in case of sales; nor shall any guardian renew any indebtedness or evidence thereof except by order of the court, made upon application and notice as in case of sales of land.

May renew debt, when. Ib.

Art. 2671. Should a guardian not have sufficient funds in hand belonging to the estate of his ward to pay and discharge any existing debt, he may renew the evidence of the same in like manner as his ward could were he able to act, and such act of the guardian shall have the same force and effect with reference to such novated paper as if done by the ward; provided, no such order shall be made if any creditor of said ward interpose any objection to the same before said order is granted; provided, that no such guardian shall renew the evidences of any debt against the estate of his ward which shall become barred by the statutes of limitation; nor shall such guardian renew the evidences of any debt that may have been made or contracted by his ward during his minority or other disabilities.

CHAPTER ELEVEN.

REPORTS OF SALES AND ACTION OF THE COURT THEREON.

	Article		Article
Sales shall be reported, when.....	2672	No conveyance until, when.....	2679
Report of sale, its requisites.....	2673	Penalty for neglect to take note and mortgage.....	2680
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Sale to be set aside, when.....	2676		
Conveyance of property sold.....	2677		
Conveyance of real estate, etc.....	2678		

Sales shall be reported in 30 days.

Article 2672. [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.

Report of sale and its requisites.

Art. 2673. [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—

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.

Report may be in term time or vacation.

Art. 2674. [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.

Action of the court on report of sale. (Act Aug. 18, 1876, p. 185, §113.)

Art. 2675. [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.

Art. 2676. [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, setting the same aside, and ordering the property to be again sold, if necessary.

Sale shall be set aside, when.

Art. 2677. [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 property sold.

Art. 2678. [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.

Conveyance of real estate. Ib. §115.

Art. 2679. [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.

No conveyance until terms of sale have been complied with.

Art. 2680. [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.

Penalty for neglect to take note and mortgage, etc.

Art. 2681. [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.

Vendor's lien on real estate sold, retained.

Art. 2682. [2600] If from any cause the guardian shall 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.

When property is not sold at the time ordered, etc. Ib. §116.

CHAPTER TWELVE.

ANNUAL ACCOUNTS.

	Article		Article
Of guardian of the person.....	2683	Account must be proved by vouchers or	
Of guardian of estate.....	2684	other evidence	2687
Shall be continued one term.....	2685	Action of the court on account.....	2688
Citation on annual account.....	2686	Citation to return account, when.....	2689
		Penalty for failing to return.....	2690

Annual account of guardian of person. (Act Aug. 18, 1876, p. 186, §120.)

Article 2683. [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.

Annual account of guardian of estate. Ib. §119.

Art. 2684. [2602] The guardian of an estate shall annually return to the court an account showing—

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.

Annual account shall be continued one term. Ib. §121.

Art. 2685. [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.

Citation on annual account. Ib. §122.

Art. 2686. [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.

Account must be proved by vouchers or other evidence. Ib. §124.

Art. 2687. [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.

Action of the court on the account. Ib. §125.

Art. 2688. [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.

Guardian shall be cited to return account, when. Ib. §128.

Art. 2689. [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.

Penalty for failing to return account. Ib. §129.

Art. 2690. [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.

CHAPTER THIRTEEN.

DEATH, RESIGNATION AND REMOVAL OF GUARDIANS.

Article	Article
When guardian dies.....2691	Order removing guardian shall state, what.....2698
Resignation of guardian.....2692	Person removed shall not be re-appointed.....2699
Citation in such case.....2693	Procedure on death of guardian.....2700
Service of such citation.....2694	Subsequent guardian shall account for, what.....2701
Action of the court upon application and account.....2695	Subsequent guardian.....2702
Removal of guardian without notice, when.....2696	
Removal after citation.....2697	

Article 2691. [2609] When a guardian dies the court, on application, shall appoint another.

When guardian dies. (Act Aug. 18, 1876, p. 179, §54.)

Art. 2692. [2610] When a guardian wishes to resign, he shall present his application in writing to that effect to the court, and accompany such application with a full and complete account of the condition of the estate and of his guardianship verified by his affidavit.

Resignation of guardian. Ib. §55.

Art. 2693. [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—

Citation in such case. Ib. §56.

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.

Art. 2694. [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.

Service of such citation. Ib. §57.

Art. 2695. [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 delivered 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.

Action of court upon application and account. Ib. §58.

Art. 2696. [2614] Guardians shall be removed in the following cases, without notice, at the regular term of the court:

Removal of guardian without notice, when. Ib. §59.

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. 2697. [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. 2698. [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.

Art. 2699. [2617] When any person shall have been removed from the guardianship of the person or estate of a ward, he shall not afterward be reappointed to such guardianship.

Person re-
moved shall
not be reap-
pointed.
Ib. §63.

When guard-
ian dies, etc.,
estate shall be
accounted for
and delivered,
etc.
Ib. §64.

Art. 2700. [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.

Subsequent
guardian shall
account for,
what.
Ib. §65.

Art. 2701. [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 suc-
ceeds to,
what.

Art. 2702. [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.

CHAPTER FOURTEEN.

CLAIMS AGAINST THE ESTATE.

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Guardian may pay claim without authentication, when.....2703	Order of approval or disapproval is a judgment.....2717
Claim shall not be allowed unless supported by affidavit, etc.....2704	Appeal may be taken from action of court on claim.....2718
Claim not founded on written instrument affidavit shall state facts.....2705	Action of court on claim.....2719
When claim belongs to corporation, who shall make affidavit.....2706	Lost claim, how proved.....2720
Affidavit by officer of corporation, executor, etc., shall state what.....2707	Claim by guardian established, how.....2721
Affidavit may be made before what officers.....2708	When a claim is "exhibited".....2722
Memorandum of allowance or rejection on claim.....2709	When a claim is "established".....2723
Failure to make memorandum.....2710	When claims may be exhibited.....2724
Rejected claim barred, when.....2711	Limitation is interrupted, how.....2725
Memorandum evidence.....2712	Guardian shall not purchase claim.....2726
When claim is allowed, shall be presented, etc.....2713	Claim established by judgment shall be filed, etc.....2727
Claims shall be examined, etc., by the court.....2714	Costs incurred in exhibiting, etc., a claim, taxed, how.....2728
Any person may contest claim.....2715	Claim docket.....2729
Court shall hear evidence on claim.....2716	Payment of claims.....2730
	Order to pay creditor.....2731
	Execution against guardian.....2732
	Sureties on guardian's bond shall be cited, when.....2733
	Citation and judgment in such case.....2734

Article 2703. [2621] A guardian may pay any claim against the estate of his ward which he knows to be just, without the authentication thereof.

Art. 2704. [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. 2705. [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. 2706. [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. 2707. [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 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. 2708. [2626] The affidavit authenticating a claim may be made before any officer authorized to administer oaths.

Art. 2709. [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

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.

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.

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. 2710. [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. 2711. [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. 2712. [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. 2713. [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. 2714. [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. 2715. [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. 2716. [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. 2717. [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. 2718. [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. 2719. [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. 2720. [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 affidavit or oath, produced in court or taken by deposition, before it shall be approved by the court.

Claim held by guardian, established, how.
Ib. §158.

Art. 2721. [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.

When claim is said to be exhibited.
Ib. §169.

Art. 2722. [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.

2. When after being rejected suit is commenced thereon.

Art. 2723. [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. 2724. [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 a claim may be exhibited.
Ib. §172.

Art. 2725. [2643] The general law of limitations is interrupted—

Limitation is interrupted, how.
Ib. §173.

1. By filing a claim which has been allowed.

2. By commencing a suit upon a rejected or disapproved claim within ninety days after such rejection or disapproval.

Art. 2726. [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. 2727. [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. 2728. [2646] The costs incurred in the exhibition and establishment of claims shall be taxed as follows:

Cost 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. 2729. [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. 2730. [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. 2731. [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. 2732. [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 be issued for the amount

Execution shall issue against guardian, when.
Ib. §97.

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.
 lb. §98.

Art. 2733. [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.
 lb. §99.

Art. 2734. [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
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Duty of county officer to file information, when	2736
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Proceedings and trial.....	2739
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New trial may be granted.....	2741
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Order for support of ward's family.....	2743
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Restraint of enraged ward.....	2745
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Who are liable to maintain persons of unsound mind	2747
Expenses of confinement.....	2748
County may recover expenses.....	2749
Proceedings to discharge ward from guardianship	2750
Same subject	2751
Court may discharge from guardianship without jury, when.....	2752

County judge shall issue warrant on information. (Act Aug. 18, 1876, p. 187, §141.)

Article 2735. [2653] If information be given to the judge of the county court that any person of 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. 2736. [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. 2737. [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. 2738. [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.

Art. 2739. [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.

Proceedings and trial.

Art. 2740. [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. 2741. [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. 2742. [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. 2743. [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. 2744. [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. 2745. [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. 2746. [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. 2747. [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. 2748. [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. 2749. [2667] In all cases of appropriations out of the county treasury for the support and confinement of any person of

County may recover back expenses paid. Ib. §182.

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.

Proceedings to discharge ward from guardianship. Ib. §183.

Art. 2750. [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.

Same subject. Ib.

Art. 2751. [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. 2752. [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.

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Non-resident guardian may obtain letters in this state, how.....	2753	Property shall not be removed until debts are paid, etc.....	2756
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Resident executor, etc., may be ordered to deliver property.....	2755		

Non-resident guardian may obtain letters in this state, how. (Act Aug. 18, 1876, p. 180, §70.)

Article 2753. [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. 2754. [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.

Art. 2755. [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.

Resident executor, etc., may be ordered to deliver property.
Ib. §72.

Art. 2756. [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.

Property shall not be removed until debts are paid, etc.
Ib. §73.

Art. 2757. [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.

Benefits of this chapter shall not extend, etc.
Ib. §74.

CHAPTER SEVENTEEN.

REMOVAL OF GUARDIANSHIP.

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Article 2758. [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. 13, 1876, p. 135, §§117-18.)

Art. 2759. [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.
Ib. §118.

Art. 2760. [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. 2761. [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. 2762. [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. 2763. [2681] When a guardianship has been removed from one county to another, in accordance with the provisions of this

Guardianship when removed shall be proceeded with, how, etc.

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.

CHAPTER EIGHTEEN.

FINAL SETTLEMENT.

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When guardianship shall be settled.

Article 2764. [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, 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. 2765. [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. 2766. [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. 2767. [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 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. 2768. [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.

Art. 2769. [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. Same subject.

Art. 2770. [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. Action of court upon account.

Art. 2771. [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. Account shall be re-stated, when.

Art. 2772. [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. Guardian must produce vouchers, etc.

Art. 2773. [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. Court shall appoint attorney to represent ward, when.

Art. 2774. [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. Debts that could not be collected to be excluded. Ib. §130.

Art. 2775. [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. 2776. [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. 2777. [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.

Judgment in such case.

Art. 2778. [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 complaint 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.

CHAPTER NINETEEN.

COMPENSATION OF GUARDIANS, EXPENSES AND COSTS OF GUARDIANSHIP.

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Guardian of person receives no pay. (Act Aug. 18, 1876, p. 187, §189.)

Article 2779. [2697] The guardian of the person alone is entitled to no compensation.

Commissions of guardians. Ib. §40.

Art. 2780. [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 the guardianship.

Extra compensation, when allowed. Ib.

Art. 2781. [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.

Expenses incurred to be allowed. Ib. §131.

Art. 2782. [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, to be paid out of the estate on satisfactory proof thereof being made to the court.

Pay of appraisers.

Art. 2783. [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. 2784. [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. 2785. [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.

Art. 2786. [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. In proceedings against persons of unsound mind, etc. Ib. §195.

Art. 2787. [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. Same subject. Ib.

Art. 2788. [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. Cost laws apply to guardianships. Ib. §189.

CHAPTER TWENTY.

APPEAL, BILL OF REVIEW AND CERTIORARI.

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Article 2789. [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. Right of appeal. (Act Aug. 18, 1876, p. 192, §197.)

Art. 2790. [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. Notice of appeal. Ib. §198.

Art. 2791. [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 anything that does not relate to the decision, order or judgment appealed from. Transcript on appeal. Ib. §199.

Art. 2792. [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. Several appeals may be embraced in same transcript, when. Ib.

Art. 2793. [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. 2794. [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 suf- Appeal shall not suspend decisions, etc., unless, etc. Ib. §201.

ficient 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 suspends decision, etc., without bond, when.

Art. 2795. [2713] An appeal suspends the decision, order or judgment, without bond—

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.

Judgment of district court shall be entered of record, etc.

Art. 2796. [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 dismissing appeal, etc.

Art. 2797. [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.

Appeal shall be tried de novo. (Act May 13, 1846.)

Art. 2798. [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.

Bill of review may be brought.

Art. 2799. [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.

Certiorari.

Art. 2800. [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.

TITLE LII.

Heads of Departments.

CHAPTER ONE.

SECRETARY OF STATE.

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Article 2801. [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. 2802. [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. 2803. [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 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.

Art. 2804. [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.

His appointment and term. (Const., art. 4, §21.) (Act May 9, 1845.)

O. & W. 1818. Shall register governor's acts. Ib. §2. O. & W. 1819.

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Shall receive and bind enrolled bills, etc. Ib. §4. O. & W. 1821.

Shall forward laws, etc., to certain foreign officials. (Act March 20, 1848.) O. & W. 1825.

Art. 2805. [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.

Disposition of books received.

Art. 2806. [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.

Copies of reports to be sent to whom. (Acts of 1887, p. 114.)

Art. 2807. [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 attorney general, the assistant attorney general, the governor, each district judge of the state, each professor of law of the university of Texas, the librarian of said university, and to the county judge of each county for the use of the counties, one copy of the reports of the supreme court and courts of appeals, hereafter issued; also one copy of each of said reports to the circuit judge of the United States for Texas, and shall furnish to each district judge of the United States for Texas one copy of each of said reports for each branch of his court; and when it appears that any of the reports of either of said courts have been heretofore furnished and not returned to the department of state, or when they are hereafter delivered by the state to either of the said officers or authorities, the secretary shall have no authority to send another copy, except on proof that the same have been destroyed by fire, or have been rendered valueless by long use, to be evidenced by the certificate of the officer demanding to be resupplied with such report.

What officers entitled to receive copies of laws. (Acts 1885, p. 68.)

Art. 2808. [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, each member of the legislature, the judges of the several courts throughout the state, and the clerks of said courts, and each county attorney. The following officers shall be entitled to receive one copy each of all general laws hereafter passed by the legislature, to-wit: County attorney, county treasurer, county surveyor, sheriff, assessor of taxes, collector of taxes, inspector of hides and animals, justice of the peace, constable and county commissioner.

How distributed. (Act Feb. 2, 1850, p. 99, §3.) P. D. 4585.

Art. 2809. [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 departments, 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.

Art. 2810. The secretary of state is authorized to sell copies of the general and special laws of the state of Texas that have been or may hereafter be published, at a price not to exceed twenty-five per cent above cost of publishing; provided, that a sufficient number of all laws published be reserved from sale for the use of the state; and provided further, that any money realized in excess of the costs attending such sale shall be placed to the account of the general revenue in the state treasury.

May sell copies of laws. (Acts 1883, p. 33.)

Art. 2811. [2728] He shall distribute to the governor and heads of departments, 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.

Legislative journals, how distributed. Ib. §4. P. D. 4586.

Art. 2812. [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 and courts of appeals, to each clerk of the supreme, district and county courts, and courts 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.

Digest of laws, how distributed. Ib. §5. P. D. 4587.

Art. 2813. [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.

Executive officers entitled to copies. Ib. §7. P. D. 4589.

Art. 2814. [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.

Officers shall receipt for books. Ib. §6. P. D. 4588.

Art. 2815. [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.

Shall distribute U. S. laws. (Act May 9, 1846, p. 139, §6.) P. D. 4582.

Art. 2816. [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.

May appoint chief and other clerks.

Art. 2817. [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.

Chief clerk may act, when. Ib. §7. P. D. 5094.

CHAPTER TWO.

COMPTROLLER OF PUBLIC ACCOUNTS.

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His election and term of office. (Const., art. 4, §2.)

Article 2818. [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.

Vacancies, how filled.

Art. 2819. [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.

His bond and oath. (Act April 11, 1864, p. 68, §1.) P. D. 5413.

Art. 2820. [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.

Seal of office. Ib. §18. P. D. 5430.

Art. 2821. [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 treasury of the state.

His general duties. Ib. §2. P. D. 5414.

Art. 2822. [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 by law.

To keep all accounts of state. Ib. §4. P. D. 5416.

Art. 2823. [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.

Art. 2824. [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. 2825. [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 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.

Certain accounts to be verified.
Ib. §13.
P. D. 5425.

Art. 2826. [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.

Shall require settlements.
Ib. §7.
P. D. 5419.

Art. 2827. [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 claim shall be otherwise specially provided for.

Shall audit claims against state.
Ib. §6.
P. D. 5418.

Art. 2828. All sheriffs, attorneys and all other parties holding claims against the state of Texas for which no warrants have been issued, and the appropriation for which has been exhausted, shall present the same to the comptroller of the state of Texas for his consideration at least thirty days before the meeting of each regular session of the legislature of the state of Texas.

Sheriffs, etc., to present claims for audit.
(Acts 1879, S. S., p. 32.)

Art. 2829. The comptroller of the state of Texas is authorized and directed to audit no claims against the state not presented in the time prescribed in article 2828, until all claims presented prior to that time have been considered and passed upon by him.

Shall not audit claims, unless.
Ib. §2.

Art. 2830. The comptroller of the state of Texas shall keep a book for the purpose of registering and indexing all audited claims against the state, and on the meeting of the regular session of the legislature shall make a minute report of the same to the two houses thereof, giving the names and amounts of all audited claims.

Claims to be registered and reported.
Ib. §3.

Art. 2831. [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.

Shall draw warrants on treasurer.
P. D. 5429.
(Acts of 1846, p. 68.)

Art. 2832. No warrant shall be drawn on the treasurer of this state by the comptroller, based alone on the requisition of any individual or board, except as otherwise provided by law, but in all cases an account must be first filed, made in pursuance of some specific appropriation, and filed by some one duly authorized, which the comptroller may require to be verified by affidavit.

Warrant not to be drawn on requisition.
(Acts of 1835, p. 35.)

Art. 2833. [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.

Warrants to be numbered.
(Acts of 1846, p. 63.)
P. D. 5422.

If warrant is lost, duplicate may issue. (Act Aug. 21, 1876, p. 281, §1.)

Art. 2834. [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.

Prerequisites to such issuance. Ib.

Art. 2835. [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.

If duplicate be improperly issued. Ib. §2.

Art. 2836. [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.

Monthly reports to treasurer. P. D. 5423.

Art. 2837. [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.

Quarterly examination of treasury. (Act April 11, 1846, p. 68, §20.) P. D. 5432.

Art. 2838. [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.

Shall furnish forms and prescribe tax regulations. Ib. §12. P. D. 5424.

Art. 2839. [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.

To send to tax collectors lists of lands purchased at tax sales by state. (Acts of 1879, p. 79.)

Art. 2840. 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.

Art. 2841. [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. (Acts of 1846, p. 68, §68.) P. D. 5428.

Art. 2842. [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. 2843. [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. 2844. [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. 2845. [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. 2846. [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.

Art. 2847. [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.

Chief clerk and his duties. (Act Feb. 10, 1852, p. 83.) P. D. 5433.

Art. 2848. [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.

Shall turn over to successor. (Act April 11, 1846, p. 68.) P. D. 5421.

CHAPTER THREE.

STATE TREASURER.

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His election and term of office.
(Const., art. 4, §2.)

Vacancies, how filled.

His oath and bond.
(Act March 19, 1846, p. 10, §1.)
P. D. 5282.

New bond may be re-quired.
(Act May 3, 1873, p. 62, §3.)

Failing to give new bond.
Ib. §4.

Article 2849. [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.

Art. 2850. [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.

Art. 2851. [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.

Art. 2852. [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. 2853. [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.

Art. 2854. [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. 2855. [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. 2856. [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. 2857. [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. 2858. [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. 2859. [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 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. 2860. [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. 2861. [2773] The treasurer shall appoint a chief clerk and such other employes 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, bookkeeper, etc.

Art. 2862. [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, §8.) P. D. 5289. Art. 2863. [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.

Custodian of school fund bonds. (Acts 1895, p. 9.) Art. 2863a. The treasurer of the state of Texas is hereby made the custodian of all bonds in which the school funds of the state of Texas have been or may hereafter be invested, under the provisions of an act of the legislature, approved March 24, 1885, and also an act of the legislature approved February 1, 1889; and that it is hereby made his duty to keep said bonds in his custody until the same shall be paid off, discharged, or otherwise disposed of by the proper authorities of said state.

Duty with respect thereto. Ib. Art. 2863b. Said treasurer shall upon the payment of any installment of interest see that the proper credit is given, and that the coupons on said bonds when paid shall be properly separated therefrom and cancelled by said treasurer.

CHAPTER FOUR.

COMMISSIONER OF THE GENERAL LAND OFFICE.

Article	Article
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His election, term and salary. (Const., art. 4, §§2, 23.) Article 2864. [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. 2865. [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. 4086. Art. 2866. [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. 2867. [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.

Art. 2868. [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.

His general
duties.
Ib. §1.
P. D. 4091.

Art. 2869. [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.

Give informa-
tion to the
governor, etc.
Ib. §12.
O. & W. 1155.

[Note.—Article 2870, which was the act of 1879, requiring the commissioner of the general land office to furnish tax assessors with abstracts of all surveys of land in their respective counties, was stricken out by the joint committee on amendments to the civil statutes. See Sen. Jour., p. 479.]

CHIEF CLERK.

Art. 2871. [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.

Chief clerk.
(Acts of 1846,
p. 232, §4.)
P. D. 4094.

Art. 2872. [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
commission-
er, when.
Ib. §4.
P. D. 4095.

SPANISH TRANSLATOR.

Art. 2873. [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. 4094,
4097.

Art. 2874. [2785] It shall be the duty of said translator to translate into the English language, and record in 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 or 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. 2875. [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.)

Shall receive
and receipt
for money.
Ib. p. 162,
§2.

Art. 2876. [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 register
receipts and
payments.
Ib.

Art. 2877. [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 report
annually to
the governor,
etc.
Ib. §3.

Art. 2878. [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.

If defaulter,
to be re-
moved.
Ib.

Art. 2879. [2790] The commissioner shall from time to time examine the books and accounts of the receiving clerk and note that they are properly 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 drafts-
men.
(Act Feb. 5,
1841, p. 150.)
P. D. 4100.

Art. 2880. [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 duty 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 and 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 as 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. 2881. [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.

Art. 2882. [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. Salary of chief clerk, etc.

Art. 2883. [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. All employes may be removed by the commissioner.

CHAPTER FIVE.

ATTORNEY GENERAL.

	Article		Article
His election, term and salary.....	2884	Agent of county authorized to bid.....	2896
Vacancies, how filled.....	2885	Sale of judgments against insolvents.....	2897
Shall represent state in higher courts.....	2886	Register of official acts.....	2898
And advise district attorneys.....	2887	Shall pay over collections, when.....	2899
Direct county attorneys to sue, etc.....	2888	Enforce forfeitures of charters, when.....	2900
Shall require and make reports of suits.....	2889	To inquire into charter rights, etc.....	2901
Prepare forms for contracts.....	2890	No admission to prejudice state.....	2902
Shall advise the governor.....	2891	Office, where kept.....	2903
Shall inspect accounts, where.....	2892	Assistant attorney-general.....	2904
Represent state at sales.....	2893	His duties.....	2905
To execute deeds, when.....	2894	Same.....	2906
May sell property, how.....	2895	Governor to order suits, etc.....	2907

Article 2884. [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. His election, term and salary. (Const., art. 4, §§1, 2, 22.)

Art. 2885. [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. Vacancies, how filled.

Art. 2886. [2797] It shall be the duty of the attorney general to prosecute and defend all actions in the supreme court or courts 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. Shall represent state in higher courts. (Act May 11, 1846, p. 206, §1.) P. D. 198.

Art. 2887. [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. And advise district attorneys. Ib. §3. P. D. 200.

Art. 2888. [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. 2889. [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, Shall require and make reports of suits. Ib. §§7, 8. P. D. 204-5.

a full and correct statement of the situation of all suits instituted for the collection of public money.

Prepare forms
for contracts,
etc.
Ib. §10.
P. D. 207.

Art. 2890. [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.

Shall advise
the governor,
etc.
Ib. §9.
P. D. 206.
(Acts 1879, ch.
117, p. 127.)

Art. 2891. [2802] At the request of the governor or the heads of departments at the capitol, he shall give them legal advice in writing upon any question touching the public interest or concerning their official duties.

Shall inspect
accounts in
offices of
treasurer and
comptroller.

Art. 2892. [2802a] 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 their hands, funds belonging to the state.

Required to
attend sales
and bid in
land.
(Acts 1879, S.
S. pp. 9-10.)

Art. 2893. In any case wherein any property shall be sold by virtue of any execution or order of sale issued upon any judgment in favor of the state, except executions issued upon judgments in cases of scire facias, the agent or attorney representing the state by and with the advice and consent of the attorney general of the state, is hereby authorized and required to attend such sales, and bid on and buy in for the state said property, when it shall be deemed proper to protect the interest of the state in the collection of such judgment; provided, that in no case shall the amount bid by him exceed the amount necessary to satisfy said judgment and all costs due thereon.

To execute
deeds.
Ib. §2.

Art. 2894. In all cases where property is so purchased by the state the officer selling the same shall execute and deliver to the state a deed of conveyance to the same, such as is prescribed for individuals in similar cases.

May sell such
property, how.
Ib. §3.

Art. 2895. The agent or attorney of the state buying for the state any such property at such sale shall be authorized by and with the advice and consent of the attorney-general at any time to sell or otherwise dispose of said property so purchased in the manner and upon such terms and conditions as he may deem most advantageous to the state; and if sold or disposed of for a greater amount than is necessary to pay off the amount due upon the judgment and all costs, the remainder shall be paid into the state treasury and placed to the credit of the general revenue; and when such sale is made the attorney-general shall, in the name of the state, execute and deliver to the purchaser a deed of conveyance to said property, which deed, when so signed by him, shall vest all the right and title to the same in the purchaser thereof.

Agent of
county author-
ized to bid in
for county
and to sell
same.
Ib. §4.

Art. 2896. When any such property is sold under execution or order of sale issued upon any judgment in favor of the county, including executions issued upon judgments in cases of scire facias in the name of the state, the attorney or agent so representing the county, by and with the advice and consent of the commissioners' court, shall have the same authority to buy and dispose of such property for the county as the agent or attorney for the state is given in this chapter in similar cases; and when any property is so pur-

chased by the agent or attorney of the county, the officer so selling the same shall execute and deliver to the county a deed of conveyance to the same; and whenever the property so bought in for the county is sold, the county commissioners' court shall execute and deliver to the purchaser thereof a deed of conveyance in the name of the county to such property.

Art. 2897. Whenever the principal and sureties upon any judgment held by the state are insolvent so that under any existing process of law said judgment or any part thereof can not be collected, there shall be and is hereby constituted a board consisting of the attorney-general, comptroller and treasurer of the state, who are hereby empowered and authorized by such advertising as they may deem necessary to offer for sale at public outcry, or by private sale, as they may deem to the best interest of the state, all the right of the state to such judgment; and if by public sale, if the amount bid on the same should not be deemed sufficient, they shall refuse to accept the same, and dispose of the same in any manner deemed by them most advantageous to the interest of the state, and upon sale shall make a proper assignment of said judgment to the purchaser.

Sale of judgments against insolvents.
Ib. §5.

Art. 2898. [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.
(Acts of 1846, p. 204.)
Ib. §12.
P. D. 209.

Art. 2899. [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. 2900. [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, misuser or non-user, forfeited its charter or any rights thereunder.

Enforce forfeiture of charters, etc.
(Act Aug. 21, 1876, p. 312, §1.)

Art. 2901. [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.)

Art. 2902. [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.

No admission to prejudice.
(Act May 11, 1846, p. 206, §14.)
P. D. 211.

Art. 2903. [2808] The attorney-general shall reside and keep his office at the seat of government.

Office, where kept.
Ib. §15.
P. D. 212.

Art. 2904. [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

Assistant attorney-general.
(Act March 15, 1875, p. 179.)

term of two years, and until the election and qualification of his successor.

His duties.
Ib.

Art. 2905. [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 courts of appeals.

Further duties.
Ib.

Art. 2906. [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.

Governor authorized to order civil suits, when. (Acts of 1887, p. 138.)

Art. 2907. The governor is hereby authorized to order through the proper officials the institution, prosecution or defense of any civil action or suit whenever he deems such course proper for the assertion or defense of any right of the state, and to render to said officials such assistance as to him may seem necessary or expedient.

CHAPTER SIX.

COMMISSIONER OF AGRICULTURE, INSURANCE, STATISTICS AND HISTORY.

	Article		Article
Appointment by the governor.....	2908	Shall procure archives from Mexico.....	2920
Term of office.....	2909	Director of A. & M. college.....	2921
Vacancies, how filled.....	2910	Shall procure statistics, etc.....	2922
Oath and bond.....	2911	To furnish tax assessors blanks.....	2923
May appoint clerks.....	2912	Distribution of reports.....	2924
Qualification of chief clerk, etc.....	2913	To have geological survey made.....	2925
Seal of office.....	2914	Commissioner shall cause assays to be made, etc.....	2926
Who are disqualified as commissioner, etc.....	2915	Shall preserve records, etc.....	2927
General duties of commissioner.....	2916	To prescribe fees, etc.....	2928
What volumes to be taken out.....	2917	Commissioner and employes prohibited from dealing in mines.....	2928a
Shall procure full sets of laws.....	2918		
Report to governor, etc.....	2919		

Appointment by the governor. (Act Aug. 21, 1876, p. 219, §2; Acts 1887, p. 99; Acts 1889, pp. 53-54; Const., art. 16, §38.)

Art. 2908. [2812] The governor shall appoint, by and with the advice and consent of the senate, a commissioner of agriculture, 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. 2909. [2813] The commissioner of agriculture, 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. 2910. [2814] The governor may fill any vacancy occurring in the office of commissioner of agriculture, 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. 2911. [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.

Art. 2912. Said commissioner may appoint a competent chief clerk and such other clerks as the labors of his office may require; and all clerks shall be removable at the pleasure of the commissioner.

May appoint clerks, their compensation. (Sen. Jour., 1895, p. 478.)

Art. 2913. [2816] The chief clerk 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 chief 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 position.

Qualifications of chief clerk. Ib.

Art. 2914. Said commissioner shall be styled the commissioner of agriculture, insurance, statistics and history, and shall have a seal of office, the design of which shall consist of a star with five points with letters composing the word "Texas" arranged between the respective points thereof, said seal to be not less than one and a half and not more than two inches in diameter, and on the margin thereof around the points of the star shall be inserted the words, "Department of Agriculture, Insurance, Statistics and History," or an intelligible abbreviation thereof. Such seal thus formed and impressed shall be the seal of the office of the department of agriculture, insurance, statistics and history.

Seal of office. (Acts of 1889, p. 53.)

Art. 2915. No person who is a director, officer or agent of, or directly or indirectly interested in, any insurance company, except as insured, shall be a commissioner or clerk, and it shall be unlawful for such commissioner, or any person employed by him or in any way connected with his office, to purchase all or any part of any mine or mineral land, to be in any manner interested in such purchase, during the term of his office or employment.

Who disqualified. (Acts of 1887, p. 99; Acts 1888, p. 10.)

Art. 2916. The duties of the commissioner of agriculture, insurance, statistics and history shall be as follows:

Duties.

1. To execute the laws relating to insurance and insurance companies doing business in this state.

2. To execute the laws in relation to statistics and history.

3. To execute the laws in relation to agriculture as herein provided.

4. To have charge of the state library, and all books, manuscripts and other articles therein contained.

5. To cause to be bound the current files of not less than six nor more than ten leading newspapers of the state.

6. To obtain from every available source all reliable information and statistics relating to the population, wealth and general resources of the state.

7. To correspond with persons well informed in the history of Texas, and to solicit reliable information concerning the same as he may deem best.

8. To revise and digest such information in proper form, and he shall record the same in a well-bound book, carefully indexed for future use, and number and file the original documents in his office.

9. To keep a book in which he shall enter the names of persons furnishing data pertaining to Texas history.

10. To demand and receive from officers having them in charge all books, maps, papers, documents, memoranda and data not connected with or necessary to the current duties of said officers, relating to the history of Texas, and carefully catalogue, classify and preserve the same.

11. The attorney-general shall decide as to the proper custody of such books, etc., whenever there is any disagreement as to the same.

12. To preserve all historical relics, mementos, antiquities and works of art connected with and relating to the history of Texas, which may in any way come into his possession as such commissioner.

What volumes to be taken out.
Ib.

Art. 2917. 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 in volumes of books, to be taken from his custody, nor from the public buildings which have been assigned for their preservation.

Shall procure full sets of laws.
Ib.

Art. 2918. The commissioner shall procure and keep in the state library the general laws of the United States and of every state in the Union, and from time to time make such purchases of books and other articles as may be directed by law.

To report to the governor.
Ib.

Art. 2919. It shall be the duty of the commissioner to make such report 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.

Shall procure archives, etc., from Mexico.
Ib.

Art. 2920. 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 procure authentic copies thereof; also any and all papers relating to the early history of Texas.

Ex officio member of board of directors A. & M. college. (Acts of 1887, p. 99, §3.)

Art. 2921. The commissioner of agriculture, insurance, statistics and history shall be ex officio a member of the board of directors of the agricultural and mechanical college of the state, and allowed all necessary expenses in attending the meetings of the board.

Shall provide statistics of agriculture, etc.
Ib. p. 9.

Art. 2922. Said commissioner shall, through his department, correspond with the department of agriculture at Washington City, and with the department of agriculture of the several states and territories of the United States, and, at his option, with those of foreign countries and the representatives of the United States in foreign countries, with the view of gathering facts and information that will aid and advance the interests of agriculture in Texas. He may also, for the same purpose, correspond with such organizations, societies and associations in the state having for their object the promotion of agriculture in any of its branches, as he may choose, as well as such individuals as he may select in various parts of the state.

To furnish tax assessors blanks. (Acts of 1889, p. 54.)

Art. 2923. Said commissioner shall plan and arrange for collecting and publishing agricultural and farm statistics in such manner and numbers as he may deem best or the condition of the department will permit, and shall, before the first day of January of each year, furnish the tax assessor of the several counties in the state with the necessary blanks, together with such instructions as will properly direct them in that work, and such blanks shall contain only such questions as relate to agriculture, horticulture and stock raising.

Art. 2924. The annual reports of the commissioner shall be distributed through the state, and in such manner as the commissioner may deem best; and he may, whenever the means of the department will allow and the interests of agriculture require, take the necessary steps for publishing semi-annual or quarterly reports of the condition of the crops, stock and other matters relating to this department, and distribute the same in such manner as he may think will best promote the public good.

Distribution
of reports.
(Acts of 1887,
p. 99.)

GEOLOGY AND MINERALOGY.

Art. 2925. It shall be the duty of the commissioner of agriculture, insurance, statistics and history to have a geological and mineralogical survey made of the state of Texas, and for that purpose he shall employ such a number of competent persons, skilled in the science of geology and mineralogy, as shall be necessary to properly and expeditiously execute said work. The persons so employed shall be under the supervision and control of the said commissioner, and shall receive such compensation as the commissioner may direct, not to exceed two thousand dollars per year. The commissioner shall provide all necessary chemical apparatus, books, maps and stationery, and may employ such additional clerks as shall be requisite to a proper execution of such work, which clerks shall receive such compensation as he may deem proper, not to exceed nine hundred dollars each per year.

To have
geological,
etc., survey
made.
(Acts 1888, S.
S. p. 10, §1;
amend., Sen.
Jour., 1895,
p. 478.)

Art. 2926. The commissioner shall cause to be made assays, analyses or other scientific examination of all beds or deposits of ores, coals, clays, marls and other mineral substances situated in this state as shall be requisite to a correct knowledge of the extent and value thereof. He shall also, in all proper cases, upon application, require like examinations, assays or analyses to be made of deposits, mines and lands situated in this state, and shall furnish proper certificates of the result of such examination, assays or analysis. He shall also, upon request of any person, require assays or analyses to be made of any specimen of soil or mineral deposit in this state, and shall also furnish to the party requesting it a certificate thereof; provided, that in all cases when assays or analyses are made upon request of any person, the party making the request shall be required by the commissioner to make affidavit that the specimen offered was found upon the land of the party making the request, or that said request is made at the instance or with the full knowledge and consent of the owner of the land upon which said specimen was found.

Commissioner
shall cause
assays, etc.
Ib. §2.

Art. 2927. The commissioner shall preserve a record of this department of his office, and the information therein collected and preserved shall be reported to the governor as in case of other matters relating to his office. He shall also report to the governor before each session of succeeding legislatures, for information of the governor and such legislatures, all money expended and how and for what purpose such money was expended. He shall also report the amounts of money received from persons, corporations or syndicates for services rendered, specifying the amount so received. He shall also preserve specimens of minerals, coals, stones and other natural substances useful in agriculture, manufacturing or the mechanical arts, and shall from time to time, as far as practicable, add specimens of organic remains and other objects of natural history peculiar to this state.

Commissioner
shall preserve
records.
Ib. §3.

Commissioner to prescribe fees. Ib. §4.

Art. 2928. The commissioner shall prescribe a schedule of reasonable fees to be charged and collected from all persons having scientific examinations, assays or chemical analyses made, and for certificates furnished under this chapter, which fees shall, when collected, be paid into the state treasury to the credit of the general revenue fund.

Commissioner and employes prohibited from dealing in mines. (Com. amendment, Sen. Jour., 1895, p. 478.)

Art. 2928a. It shall be unlawful for the commissioner of agriculture, insurance, statistics and history, or any person employed by him or connected with his office, to purchase all or any part of any mine or mineral lands, or be in any manner interested in such purchase, during the term of his office or employment. Any person violating the provisions of this article shall be punished by fine as provided in the Penal Code.

CHAPTER SEVEN.

OF THE MODE OF SUPPLYING FUEL TO THE EXECUTIVE AND OTHER DEPARTMENTS.

Article	Article
Board of contractors.....2929	Contractor's bond2934
Advertisement for proposals.....2930	Rescission of contract.....2935
Proposals, how made.....2931	No officer to be interested in contract. 2936
Contract awarded to lowest bidder.....2932	Rate for fuel.....2937
Bids to be guaranteed.....2933	Record of proceedings.....2938

Board of contractors. (Act Aug. 21, 1876, p. 273, §1; Const., art. 16, §21.)

Article 2929. [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 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, and said contracts shall be for the term of one year, and until a new contract shall be made and approved.

Duration of the contract. Ib.

Advertisement for proposals. Ib. §2.

Art. 2930. [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. 2931. [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. 2932. [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.

Art. 2933. [2829] Each bid shall be accompanied by a guarantee, signed by at least two responsible citizens, guaranteeing that if the contract be awarded to said bidder that he or they will enter into contract, and give a good and sufficient bond to carry out the same.

Bids to be guaranteed.
Ib.

Art. 2934. [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.

Contractor's bond.

Art. 2935. [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.

Rescission of contract.
Ib. §3.

Art. 2936. [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.

No officer to be interested in contracts.
Ib. p. 274. §5.

Art. 2937. [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.

Rate for fuel.
Ib. §6.

Art. 2938. [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.

Record of proceedings.
Ib. §4.

CHAPTER EIGHT.

STATE SUPERINTENDENT OF PUBLIC INSTRUCTION.

Article	Article
Election, term, salary; oath of office, powers and duties.....2933a	Shall counsel with school boards, issue rules, instructions, etc.....2938d
Charged with the administration of the school laws; other powers and duties.....2933b	Shall have school laws printed and distributed, etc.....2938e
Shall file and index reports, etc.....2933c	

Article 2938a. There shall be elected, at each general election for state and county officers, a state superintendent of public instruction, who shall hold his office for a term of two years, and until his successor is elected and qualified, and shall receive an annual salary of twenty-five hundred dollars, and may employ as many clerks as may be necessary to perform the duties of his office, the number to be determined by the state board of education; provided, that no greater number shall be employed than the legislature has appropriated salaries for. The superintendent shall take the oath of office prescribed by the constitution, and shall perform such duties as may be prescribed by law. Appeals shall always lie from the rulings of the state superintendent to the state board of education.

Election, term and salary; oath of office, powers and duties.
(Acts 1893, p. 187, §20.)

Charged with the administration of the school laws; other powers and duties.
Ib. §21.

Art. 2938b. The superintendent of public instruction shall be charged with the administration of the school law and a general superintendency of the business relating to the public schools of the state. He shall hear and determine all appeals from the rulings and decisions of subordinate school officers, and all such officers and teachers shall conform to his decisions, unless they are reversed by the state board of education. He shall prescribe suitable forms for reports required of subordinate school officers and teachers, and blanks for their guidance in transacting their official business and conducting public schools, and shall, from time to time, prepare and transmit to them such instructions as he may deem necessary for the faithful and efficient execution of the school laws, and by whatsoever is so communicated to them shall they be bound to govern themselves in the discharge of their official duties. He shall examine and approve all accounts of whatsoever kind against the school fund that are to be paid by the state treasurer, and upon such approval the comptroller shall be authorized to draw his warrant.

Shall file and index reports, etc.
Ib. §22.

Art. 2938c. The state superintendent shall file all reports, documents and papers transmitted to him and the state board of education by county or city school officers, and from all other sources, pertaining to public schools, and keep a complete index of the same.

Shall counsel with school boards; issue rules, instructions, etc.
Ib. §23.

Art. 2938d. The state superintendent shall advise and counsel with the school officers of the counties, cities and towns and school districts 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 wherein 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 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.

Shall have school laws printed and distributed, etc.
Ib. p. 188, §24.

Art. 2938e. He shall cause to be printed for general distribution such number of copies of the school laws as may at any time be necessary, to be determined by the state board of education.

TITLE LIII.

Holidays—Legal.

Article	Article
What are legal holidays.....2939	Arbor day2940

Article 2939. [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 first Monday in September, and 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 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, 1893, p. 4.)

Art. 2940. The twenty-second day of February of each year, the same being a legal holiday, is further set apart and designated as "Arbor Day," to be devoted to the planting and cultivation of forest, shade and ornamental trees throughout the state, and to be observed for that purpose in such manner as may seem best to the people of each community.

Arbor day. (Acts 1889, p. 78.)

TITLE LIV. House of Correction and Reformatory.

	Article		Article
Control, how vested.....	2941	Supplies, how furnished.....	2947
Trustees, qualification and pay.....	2942	By-laws, requisites of.....	2948
Meetings and reports of trustees.....	2943	Mechanical industries.....	2949
Duties of trustees.....	2944	Subordinate officers, employment of.....	2950
Superintendent, appointment, qualifica- tion, etc.....	2945	Who confined therein.....	2951
His powers and duties.....	2946	Duties towards discharged persons.....	2952
		Duties as to escaped persons.....	2953

Control, how
vested.
(Acts 1889,
p. 95.)

Article 2941. The government of the house of correction and reformatory shall be vested in the governor, a board of control who shall be known as trustees, and the superintendent.

Trustees,
qualification,
compensa-
tion, etc.
Ib. §2.

Art. 2942. Said board of control shall consist of three trustees, to be appointed by the governor with the advice and consent of the senate, and shall hold their offices for the term of two years unless sooner removed by the governor; provided, that such trustees, before entering upon the discharge of their duties, shall take the constitutional oath of office. Such trustees shall each receive the sum of five dollars per day and their actual expenses while engaged in the performance of their duties, for which the comptroller shall issue his warrant on their verified accounts approved by the governor, and two members thereof shall constitute a quorum for the transaction of business; provided, they shall not receive more than one hundred and fifty dollars per annum each.

Meetings and
reports of
trustees.
Ib. §3.

Art. 2943. Said trustees shall hold stated quarterly meetings at the reformatory, and shall convene at the seat of government, or at said reformatory in cases of emergency, when thereto called by the governor. It shall be their duty to make full and complete quarterly reports in writing to the governor, covering all the transactions at such meetings and during the preceding quarter, and on or before the thirtieth day of November of each year to make an annual report in writing to the governor, covering all transactions since their last annual report, fully exhibiting the condition of the institution, together with such suggestions as to the control, government and management thereof as they may deem necessary or requisite to the interest thereof.

Duties of
trustees.
Ib. §4.

Art. 2944. It shall be the duty of said trustees to take control and supervision of the reformatory, and in this connection they shall elect one of their members chairman at their first meeting, and prescribe rules respecting the conduct of their meetings and business; and at the same meeting they shall formulate a set of by-laws, rules and regulations for the economic and efficient government and control of said reformatory and house of correction, having in view the objects to be accomplished by the establishment thereof, which by-laws, rules and regulations shall be reported to the governor for his approval, or for his amendment and approval, and when so approved or amended and approved the same shall become binding and of

obligatory force upon the trustees, superintendent, subordinate officers, employes and inmates of said institution, and it shall be the duty of the trustees to see to the enforcement thereof, and of the laws of the state in relation to said house of correction and reformatory.

Art. 2945. The governor shall appoint a superintendent, who shall be financial agent for said reformatory and house of correction, and who shall receive for his services the sum of eighteen hundred dollars per annum, to be paid quarterly on the comptroller's warrant, based on a verified account approved by the trustees. Such superintendent shall, before entering upon the duties of his office, take the oath of office prescribed by the constitution, and shall give a bond with two or more good and sufficient sureties to be approved by the governor, in the sum of ten thousand dollars, payable to the governor and his successors in office, conditioned for the faithful discharge of the duties of his office, which bond when so approved shall be deposited in the office of the secretary of state.

Superintendent, appointment, qualification, etc.
Ib.

Art. 2946. The superintendent shall have the entire control and management of the house of correction and reformatory, subject to the authority established by law and the by-laws, rules and regulations adopted by the trustees.

Entire control subject to board.
Ib. §6.

1. It shall be the duty of the superintendent to keep a register in which he shall enter the reception, previous moral character, habits and education, so far as can be ascertained, and the discharge, death, escape, commutation of time, and punishment inflicted on each person committed to the house of correction and reformatory.

Shall keep a register.

2. It shall be his duty to obey and carry out all written orders and instructions which he shall from time to time receive from the board or from the governor.

To carry out instructions of governor and board.

3. He shall reside at the house of correction and reformatory and be held responsible for the strict enforcement of the laws, by-laws, rules and regulations, and written orders of the trustees and of the governor; he shall see that the buildings are kept in good condition and that good order be observed in all departments.

Shall reside at reformatory.

4. He shall take the proper measures to promote the healthfulness and cleanliness of the house of correction and reformatory.

Sanitation.

5. He shall keep the books of the reformatory, fully exhibiting all moneys received and disbursed, the source from which received, and the purposes for which the same were expended. Said books shall at all times be open to the inspection of the trustees or of the governor, or any one appointed by the governor or the trustees to make such inspection.

Shall keep books.

6. Said superintendent shall make full quarterly reports in writing, under oath to the governor, showing in detail the fiscal operations of the reformatory since his last report; and it shall also be his duty to make an annual report of like character to the governor, on or before the thirtieth day of November of each year, covering in detail all the fiscal operations of the reformatory for the year last past.

Shall make quarterly reports.

7. He shall purchase all materials and supplies and disburse all moneys appropriated therefor, and shall sell all products raised and all articles manufactured by the inmates, and shall deposit all money realized from the sale thereof in the treasury of the state, taking the treasurer's certificate of deposit therefor.

Shall purchase supplies.

Art. 2947. All supplies for the house of correction and reformatory which are not therein produced or manufactured shall, so far as can be done advantageously to the state, be procured from the

Supplies from penitentiaries, when.
Ib. §7.

state penitentiaries, under such rules and regulations as the trustees and governor may provide; and the laws and regulations of said penitentiaries, and the laws relating to and defining the mode and manner of furnishing supplies to the asylums, shall apply to and be complied with in procuring such other supplies as may be needed; and no officer of the house of correction and reformatory shall in any manner be interested in any contract made therefor.

Requisites of
by-laws.
Ib. §8.

Art. 2948. The by-laws herein provided for shall prescribe rules for the liberal commutation of time to be earned by the inmates for good behavior, and for apprenticing the inmates by the trustees, after a reasonable period of confinement, when deemed for the best interest of the house of correction and reformatory and the inmates, and for a term not longer than the time for which they were committed, and for tickets of leave, and for reasonable recreation, and for instruction in reading, writing, arithmetic, and habits of industry, sobriety, and in useful arts or trades; but the specification of any subject to be embraced in the by-laws shall not be construed as a limitation of the power of the trustees to make other rules, regulations and by-laws, as provided for in previous articles of this chapter.

Mechanical
industries.
Ib. §9.

Art. 2949. In connection with said house of correction and reformatory there shall be established such mechanical industries as the board of trustees may deem proper and advisable, and the inmates shall be placed at such work as the superintendent shall designate; and the trustees shall especially provide that the white and colored inmates shall be kept, worked and educated separately.

Shall employ
subordinates.
Ib. §10.

Art. 2950. The superintendent shall employ, with the advice and consent of the trustees, such subordinate officers, teachers and employes as the governor and trustees shall determine are requisite and necessary to the due conduct and administration of said house of correction and reformatory, whose salaries shall be fixed by the trustees with the approval of the governor.

Who shall be
confined
therein.
Ib. §11.

Art. 2951. In said house of correction and reformatory shall be confined all convicts heretofore transferred thereto or heretofore provided by law to be transferred from the penitentiaries of this state, and all male persons under sixteen years of age who shall hereafter be convicted of a felony in any court in this state, whose term of confinement shall not exceed five years; provided, said convicts confined in said house of correction and reformatory shall be required to wear such uniform as may be adopted by the trustees; and provided, no uniform shall be prescribed similar to that now worn by the convicts in the penitentiaries. It shall be the duty of the governor, upon the recommendation of the trustees and superintendent of said house of correction and reformatory, for good behavior and exemplary moral conduct during confinement, to restore to such convicts all their legal rights at the expiration of their respective terms of servitude.

Duties toward
discharged
persons.
Ib. §13.

Art. 2952. Upon the discharge of any persons so committed to said house of correction and reformatory, the superintendent shall provide them with a suit of suitable clothing and five dollars in money, and procure transportation for them to their homes, if resident of this state, or to the county in which they may have been convicted, or to such other place in the state at which said discharged inmate may have procured employment, at his option; provided, that such transportation shall not exceed that to the point from which said convict was convicted.

Art. 2953. If any person confined in the house of correction and reformatory 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 superintendent of the house of correction and reformatory, and they shall be returned in the same manner and under the same laws as are provided for the return of convicts escaped from the penitentiaries. And it shall be lawful for any person to apprehend such escaped inmate, and it shall be the duty of any person who apprehends such escaped inmate to immediately deliver him to the sheriff or nearest constable of the county where such arrest has been made, who shall retain him until returned as hereinbefore provided.

Escapes.
Ib. §14.

TITLE LV.

Husband and Wife.

CHAPTER ONE.

CELEBRATION OF MARRIAGE.

	Article		Article
Who are authorized to celebrate rites.....	2954	Certain intermarriages prohibited.....	2959
Who are not permitted to marry.....	2955	Marriage by bond, etc., validated.....	2960
License	2956	Issues legitimated	2961
Consent of parent or guardian.....	2957	Cohabitation of certain persons consid- ered as marriage.....	2962
Record and return of license.....	2958		

Who author-
ized to cele-
brate rites.
(Act Nov. 1,
1866, p. 72;
Acts 1891, p.
96.)
P. D. 7119.

Article 2954. [2838] All regular licensed or ordained ministers of the gospel, Jewish rabbis, 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. 2955. [2839] Males under sixteen and females under four-
teen years of age shall not marry.

License.
(Act June 5,
1837.)
P. D. 4666.

Art. 2956. [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. 2957. [2841] No clerk shall issue a license without the con-
sent 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
return of
licenses.
P. D. 4668.

Art. 2958. [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 matri-
mony 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 aforesaid; which return shall also be recorded as
aforesaid.

Certain inter-
marriages
prohibited.
P. D. 4670.
P. C. 326.

Art. 2959. [2843] It shall not be lawful for any person of Cau-
casian blood or their descendants to intermarry with Africans or
the descendants of Africans; and should any person as aforesaid vio-
late 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. 2960. [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 prac-
tice 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.

Art. 2961. [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. Issue legitimated. (Act Jan. 20, 1840.) P. D. 4672.

Art. 2962. [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.....	2963	Can not be altered after marriage.....	2965
How authenticated	2964	Reservation by wife to be recorded.....	2966

Article 2963. [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. 2964. [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. 2965. [2849] No matrimonial agreement shall be altered after the celebration of the marriage. Can not be altered after marriage. P. D. 2749.

Art. 2966. [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 WOMEN.

Article	Article		
Separate property	2967	Husband failing to support wife.....	2972
Community property	2968	Community property liable for debts.....	2973
Presumption as to community.....	2969	Female under twenty-one emancipated,	
Wife may contract debts, when.....	2970	when	2974
Judgments and execution in such cases.....	2971	Rights of persons married elsewhere.....	2975

Separate property. (Act March 13, 1848.) P. D. 4641. (Const. art. 16, §15.)

Article 2967. [2851] All property, both real and personal, of the husband, owned or claimed by him before marriage, 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 acquired, shall be the separate property of the wife; but during the marriage the husband shall have the sole management of all such property.

Community property. P. D. 4642.

Art. 2968. [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.

Presumption as to community property. (Act Jan. 20, 1840.) P. D. 4638.

Art. 2969. [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.

Wife may contract debts, when. (Act March 13, 1848.) P. D. 4643.

Art. 2970. [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 1201.

Judgment and execution in such cases. P. D. 4644.

Art. 2971. [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.

Husband failing to support wife, etc. (Act Jan. 20, 1840.) P. D. 4637.

Art. 2972. [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.

Community property liable for debts. (Act Aug. 26, 1856.) P. D. 4646.

Art. 2973. [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.

Female under 21 emancipated by marriage. (Act March 13, 1848.) P. D. 4642.

Art. 2974. [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. 2975. [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. Rights of persons married elsewhere. P. D. 4639.

CHAPTER FOUR.

DIVORCE.

[Note.—For Change of Name see Title xvii.]

Article	Article
Marriage may be annulled, when.....2976	Legitimacy of children, etc.....2982
Divorce may be granted in what cases. 2977	Debts and alienations after suit.....2983
Plaintiff must be resident in state and county2978	Inventory and appraisal, etc.....2984
Full proof required.....2979	Temporary orders, etc.....2985
Division of property.....2980	Alimony2986
Connivance and collusion.....2981	Custody of children.....2987
	Costs2988

Article 2976. [2860] The district court shall have power to hear and determine suit 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. Marriage may be annulled, when. (Act Jan. 6, 1841.) P. D. 3449.

Art. 2977. [2861] A divorce by separation from the bonds of matrimony may be decreed in the following cases: Divorce may be granted in what cases. (Act May 27, 1876, p. 16.) P. D. 3451.

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. 2978. [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. Plaintiff must be resident in the state and county. (Act May 27, 1873, p. 117.) P. D. 3459.

Art. 2979. [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 as confessed for want of an answer, but the decree of the court shall be rendered upon full and satisfactory evidence, independent of the confession Full proof required. P. D. 3452.

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.

Division of
property.
P. D. 3452.

Art. 2980. [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 himself or herself of the title to real estate.

Condonation,
connivance
and collusion.
P. D. 3460.

Art. 2981. [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.

Legitimacy of
children; par-
ties may
marry again.
P. D. 3453.

Art. 2982. [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.

Debts and
alienations
after suit
filed.
P. D. 3457.

Art. 2983. [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.

Inventory and
appraise-
ment; in-
junction.
P. D. 3458.

Art. 2984. [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 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. 2985. [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. 2986. [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. 2987. [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 any injunction or make any order that the safety and well-being of any such children may require.

Costs.

Art. 2988. [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 LVI.

Injunction.

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Service and return of writ.....3002	
Duty of defendant upon service of.....3003	

Article 2989. [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:

Writs of injunction granted, when. (Const., art. 5, §§8, 16.)

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. 2990. [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.

No injunction against a judgment, except, etc. (Act May 13, 1846, p. 363.) P. D. 3930.

Art. 2991. [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. Ib. P. D. 3931.

Art. 2992. [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.

Judge's fiat to be indorsed on petition.
P. D. 3933.

Art. 2993. [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 injunction 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. 2994. [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. 2995. [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. 3932.

Art. 2996. [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. 3933.

Art. 2997. [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 affixed 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. 2998. [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. 2999. [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. 3000. [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. 3001. [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. To whom delivered.

Art. 3002. [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. 3003. [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. 3004. [2888] Any injunction restrains the counselors, solicitors, attorneys, agents, servants and employes of the party, as well as the party himself. Injunctions restrain attorneys, etc., as well as the party.

Art. 3005. [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. 3006. [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. 3007. [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 Dissolution in term time or vacation. P. D. 3934.

the first day of the succeeding term of such court, and thereafter shall constitute a part of the record of the same.

Refunding
bond on dis-
solution.
P. D. 3937.

Art. 3008. [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 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.

Judgment on
such bond.
P. D. 3938.

Art. 3009. [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 provisions 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. 3010. [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. 3011. [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 dis-
obedience.

Art. 3012. [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. 3013. [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 prin-
ciples of
equity appli-
cable, when.

Art. 3014. [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.

Injunction by
the State.
(Acts of 1888,
p. 10, §1.)

Art. 3015. The full right, power and remedy of injunction may be resorted to and invoked by the state at the instance of the county or district attorney or attorney-general, to prevent, prohibit or restrain the violation of any revenue law of the state.

Shall be
cumulative.
Ib. §2.

Art. 3016. The right and remedy provided by the preceding article shall be cumulative of other laws in force in this state.

TITLE LVII.

Injuries Resulting in Death—Actions for.

	Article		Article
Action for injuries resulting in death, brought when.....	3017	Executor, etc., may bring the action, when	3023
Character of wrongful act.....	3018	Suit does not abate by death of either party	3024
Exemplary damages	3019	Abates, when	3025
Action commenced without regard to criminal proceedings	3020	Executor, etc., of defendant made party, when	3026
For whose benefit action to be brought.....	3021	Damages to be apportioned by jury....	3027
Who may bring the action.....	3022		

Article 3017. [2899] An action for actual damages on account of injuries causing the death of any person may be brought in the following cases:

Actions for injuries resulting in death, brought when. (Acts of 1860, p. 32; 1887, p. 44; 1892, S. S., p. 5.)

1. When the death of any person is caused by the negligence or carelessness of the proprietor, owner, charterer, hirer of any railroad, steamboat, stage coach, or other vehicle for the conveyance of goods or passengers, or by the unfitness, negligence or carelessness of their servants or agents; when the death of any person is caused by the negligence or carelessness of the receiver or receivers or other person or persons in charge or control of any railroad, their servants or agents, and the liability of receivers shall extend to cases in which the death may be caused by reason of the bad or unsafe condition of the railroad or machinery or other reason or cause by which an action may be brought for damages on account of injuries, the same as if said railroad were being operated by the railroad company.

2. When the death of any person is caused by the wrongful act, negligence, unskillfulness or default of another.

Art. 3018. [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.

Character of wrongful act. *Ib.*

Art. 3019. [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.

Exemplary damages. (Const., art. 16, §26.)

Art. 3020. [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 proceedings that may or may not be had in relation to the homicide.

Action commenced without regard to criminal proceedings. *Ib.*

Art. 3021. [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.

For whose benefit action to be brought. *Ib.* §2. P. D. 16.

Art. 3022. [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.

Who may bring the action. *Ib.*

Art. 3023. [2905] If the parties entitled to the benefit of the action shall fail to commence the same within three calendar months

Executor, etc., may bring the action, when. *Ib.*

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.

Suit does not
abate by
death of
either party.
Ib. §4.
P. D. 18.

Art. 3024. [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.

Abates, when.

Art. 3025. [2907] If the sole plaintiff die pending the suit, and he is the only party entitled to the money recovered, the suit shall abate.

Executor, etc.,
of defendant
made party,
when.
Ib.

Art. 3026. [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. 3027. [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 LVIII.

Insurance.

CHAPTER ONE.

INCORPORATION OF INSURANCE COMPANIES.

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Duty of commissioner of insurance on deposit of articles with him.....3030	Annual meeting for election.....3039
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Capital stock shall consist of what.....3034	Directors may ordain by-laws, etc.....3043
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May be changed and re-invested.....3036	Shall fill vacancies, and what shall constitute quorum of the board.....3045
	General incorporation law shall apply to insurance companies, unless, etc.....3046

Article 3028. [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.

Art. 3029. [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.

Art. 3030. [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.

Formation of company.

What the articles of incorporation shall contain.

Duty of commissioner of insurance when articles are deposited with him. (Act Feb. 17, 1875, p. 33, §7.)

Company shall certify, under oath, that the capital is bona fide its property. (Act Feb. 17, 1875, §7.)

Art. 3031. [2913] The corporators 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.

Where examination is made by other than commissioner. Ib.

Art. 3032. [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.

Stock shall be divided into shares. Ib. §3.

Art. 3033. [2915] The stock of any company organized under the laws of this state shall be divided into shares of one hundred dollars each.

Capital stock shall consist of what. (Acts of 1889, p. 11.)

Art. 3034. [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 any county or incorporated town or city thereof, or the stock of any national bank; 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 and the policy or policies transferred to the company taking such mortgage.

Capital stock may be invested, how. (Acts of 1875, p. 33.)

Art. 3035. [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.

Company may change and re-invest its stock. Ib.

Art. 3036. [2918] A company may change and reinvest its capital stock in like securities, as occasion may from time to time require.

Number and qualification of directors. Ib. §5.

Art. 3037. [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.

Election of directors. Ib.

Art. 3038. [2920] Within thirty days after the subscription books of the company have been filed, 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.

Annual meetings for election of directors. Ib. §9.

Art. 3039. [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.

Special meetings for election of directors. Ib.

Art. 3040. [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. 3041. [2923] No meeting of stockholders shall elect directors or transact such 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. Quorum of stockholders.

Art. 3042. [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. Directors shall choose president and other officers. Ib. §10.

Art. 3043. [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. Directors may ordain by-laws, etc. Ib. §11.

Art. 3044. [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. Shall keep a record of their transactions. Ib. §11.

Art. 3045. [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. Shall fill vacancies, and what shall constitute a quorum.

Art. 3046. [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.

Article	Article
Shall execute insurance laws.....	3047
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Shall issue certificate of authority.....	3049
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Free access to record, etc.....	3056
Instruments executed to be evidence, when.....	3057
Authorized to make inquiries, when.....	3058
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Authority to be revoked, when.....	3060

Article 3047. [2929] The commissioner of agriculture, 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. 3048. [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. 3049. [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 extend- Shall issue certificate of authority, when.

Subsequent certificate not to be issued, when. (Acts 1879, ch. 73, p. 83.)

ing 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.

Other duties of Commissioner.

√ Art. 3050. [2932] The following are the duties of the commissioner of agriculture, insurance, statistics and history:

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 employe of his department, the net value on the thirty-first day 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 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 as a 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 company 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 law, 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, 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 interests, 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 have been or shall be enacted, any facts which by law it is his duty to ascertain respecting the 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 exami-
nation, etc.
Ib. p. 223,
39.

Art. 3051. [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 exist.

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.

Art. 3052. [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.

Person refusing to testify may be attached, etc.
Ib. §10.

Art. 3053. [2935] 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.

Process issued by commissioner shall be executed by sheriff, etc.

Art. 3054. [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.

Transfer of securities by commissioner not valid unless countersigned by treasurer.
Ib. p. 224, §13.

Art. 3055. [2937] It is the duty of the state treasurer—

1. To countersign any such transfer presented to him by the commissioner.

Duty of treasurer in regard to such transfers.
Ib.

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.

Art. 3056. [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.

Free access to records, books, etc., given to commissioner and treasurer.
Ib. §14.

Art. 3057. [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.

Instruments executed by commissioner, and copies of papers in his office made evidence.
Ib. p. 223, §11.

Art. 3058. [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, §38.)

Art. 3059. [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.
Ib. p. 43, §28.

Insurance company's certificate of authority to transact business to be revoked, when. (Acts of 1879, ch. 144, p. 159.)

Art. 3060. [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 the 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.

CHAPTER THREE.

GENERAL PROVISIONS.

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Insurance unlawful unless authorized by commissioner of insurance. (Act May 2, 1874.) P. D. 716g.

Article 3061. [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 agriculture, insurance, statistics and history.

Statement under oath shall be furnished commissioner, and what it shall show. 1b.

Art. 3062. [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.

Art. 3063. [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.

Statement shall be accompanied with act or articles of incorporation and copy of by-laws of company.
Ib.

Art. 3064. [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.

Power of attorney shall accompany statement, etc.
Ib.

Art. 3065. [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.

Capital stock shall not be less than \$100,000.
P. D. 7116h.

Art. 3066. [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.

Comity with other states.
P. D. 7116m.

Art. 3067. [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. 3068. [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.
Ib.

Art. 3069. [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 hold-

When the deposit has been made in another state.

ers 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 agriculture, insurance, statistics and history.

Where suits against companies may be instituted, and how process may be served.
P. D. 7116g.

Art. 3070. [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.

Penalty for failure to pay loss.
P. D. 7116o.

Art. 3071. [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 execution.
P. D. 7116o.

Art. 3072. [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.

Life or health insurance company shall not take any other risks than those of life or health.
P. D. 7116l.

Art. 3073. [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.

Marine, fire and other than life or health insurance companies may do what.
(Act Feb. 17, 1875, p. 34, 33.)

Art. 3074. [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 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. 3075. [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.

Art. 3076. [2958] No fire, marine or inland insurance company organized under the laws of this state shall purchase or hold any real estate, except—

Insurance companies shall not purchase or hold real estate, except, etc. *Ib.* §16.

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.

Art. 3077. [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.

Commissioner may permit capital stock of company to be reduced, when. (Act Aug. 21, 1876, p. 222, §8, subdivision 11.)

Art. 3078. [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.

When company is called upon to make good its capital stock, shall do what. *Ib.* §221.

Art. 3079. [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.

Stockholder failing to pay when called upon, what course shall be taken. *Ib.* §8.

Art. 3080. [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.

Company may create and dispose of new stock, when. *Ib.*

Art. 3081. [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 condi-

Association of companies not permitted to do business, until, etc. *Ib.* p. 224, §15.

tions 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.

Notices shall be published, how.

Art. 3082. [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.

Annual statement of company. (Act Feb. 17, 1876, p. 37, §17.)

Art. 3083. [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.

What the annual statement shall exhibit. Ib.

Art. 3084. [2966] The annual statement required by the preceding article shall exhibit the following items and facts:

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 stock 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 reinsure 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 statement; the amount paid for dividends; the amount paid for return premiums, commissions, salaries, expenses and other charges of officers, agents, clerks and other employes; 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.

Art. 3085. [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.

Commissioner may change form of annual statements. (Act Feb. 17, 1875, p. 43, §27.)

Art. 3086. [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.

Company shall publish certificate of commissioner. Ib. §26.

Art. 3087. [2969] It shall not be lawful for any life, health, fire, marine or inland insurance company organized under the laws 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 foreclosure or collection 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.

Unlawful dividends. Ib. §15.

Art. 3088. [2970] Any dividends made contrary to the provisions of the preceding article shall subject the company making it

Penalty for making unlawful dividends. Ib.

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. 3089. [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.

Foreign assessment companies. (Acts of 1889, p. 98, §1.)

Art. 3090. Companies or associations organized under the laws of any other state of the United States, carrying on the business of life or casualty insurance on the assessment or natural premium plan, and having cash assets of a sum not less than one hundred thousand dollars, invested as required by the laws of this state regulating other insurance companies, shall be licensed by the commissioner of agriculture, insurance, statistics and history to do business in this state, and be subject only to the provisions of this chapter; provided, however, that such company or association shall first file with the commissioner of agriculture, insurance, statistics and history a certified copy of its charter, a written agreement, appointing the commissioner of agriculture, insurance, statistics and history, and his successor in office, to be its true and lawful attorney, upon whom all lawful process in any action or proceeding against it may be served; a certificate under oath of its president and secretary that it is paying and for the twelve months next preceding has paid the maximum amount named in its policies or certificates in full; a statement under oath of its president and secretary of its business for the year ending on the thirty-first day of December preceding; a certified copy of its constitution and by-laws, and a copy of its policy and application; a certificate from the proper authority in its home state that said company or association is legally entitled to do business in such home state, and has at least one hundred thousand dollars surplus assets subject to its indebtedness. It shall be the duty of the commissioner of agriculture, insurance, statistics and history to issue a license to any company or association complying with the provisions of this chapter, and every such company or association shall annually thereafter, before such license is renewed, file with the commissioner of agriculture, insurance, statistics and history, on or before the first day of March, a statement under oath of its president and secretary, or like officers, of its business for the year ending December 31st preceding.

Fees. Ib. §2.

Art. 3091. Every such company or association shall pay to the commissioner of agriculture, insurance, statistics and history, for the use of the state, the following fees: For filing copy of its charter, twenty-five dollars; for filing statement preliminary to admission, twenty dollars; for filing each annual statement after admission, twenty dollars; for license to company or association, one dollar.

Shall not apply to mutual benefit associations. Ib. §3.

Art. 3092. The provisions of this chapter shall in no wise apply to mutual benefit organizations doing business in this state through lodges or councils, such as the order of chosen friends, knights of honor, or kindred organizations.

Who are agents. (Acts of 1879, S. S., p. 32.)

Art. 3093. Any person who solicits insurance on behalf of any insurance company, whether incorporated under the laws of this or any other state or foreign government, or who takes or transmits other than for himself any application for insurance or any policy of insurance to or from such company, or who advertises or otherwise gives notice that he will receive or transmit the same, or who

shall receive or deliver a policy of insurance of any such company, or who shall examine or inspect any risk, or receive, or collect, or transmit any premium of insurance, or make or forward any diagram of any building or buildings, or do or perform any other act or thing in the making or consummating of any contract of insurance for or with any such insurance company other than for himself, or who shall examine into, or adjust or aid in adjusting any loss for or on behalf of any such insurance company, whether any of such acts shall be done at the instance or request, or by the employment of such insurance company, or of or by any broker or other person, shall be held to be the agent of the company for which the act is done, or the risk is taken, as far as relates to all the liabilities, duties, requirements and penalties set forth in this chapter; provided, that the provisions of this chapter shall not apply to citizens of this state who arbitrate in the adjustment of losses between the insurers and the insured, nor to the adjustment of particular or general average losses of vessels or cargoes by marine adjusters who have paid an occupation tax of two hundred dollars for the year in which the adjustment is made; provided further, that the provisions of this chapter shall not apply to practicing attorneys-at-law in the state of Texas, acting in the regular transaction of their business as such attorneys-at-law, and who are not local agents, nor acting as adjusters for any insurance company.

Art. 3094. Whenever any person shall do or perform within this state any of the acts mentioned in article 3093 for or on behalf of any insurance company therein referred to, such company shall be held to be doing business in this state, and shall be subject to the same taxes, state, county and municipal, as insurance companies that have been legally qualified and admitted to do business in this state by agents or otherwise, are subject, the same to be assessed and collected as taxes are assessed and collected against such companies; and such persons so doing or performing any of such acts or things shall be personally liable for such taxes.

Taxes to be assessed against, when.
Ib. §3.

Art. 3095. Any person who shall do any of the acts mentioned in article 3093 for or on behalf of any insurance company without such company has first complied with the requirements of the laws of this state, shall be personally liable to the holder of any policy of insurance in respect of which such act was done for any loss covered by the same.

Penalty, etc.
Ib. §4.

Art. 3096. Nothing in this title shall be construed to affect or in any way apply to mutual relief associations organized and chartered under the general incorporation laws of Texas, or which are organized under the laws of any other state, which have no capital stock, and whose relief funds are created and sustained by assessments made upon the members of said associations in accordance with their several by-laws and regulations; provided, that the principal officer of every such benevolent organization (not conducted by lodges a quorum of whose members meet in their respective lodge rooms at least once each month), shall be required to make an annual statement under oath to the department of agriculture, insurance, statistics and history on the first day of January of each year, or within sixty days thereafter, showing—

Shall not affect mutual relief associations.
(Acts of 1885, p. 62.)

1. Name of organization and where located.
2. Name and residence of officers.
3. The salary paid each officer.
4. The gross amount of money received during the year, and from what sources.

- 5. The amount paid to policy holders on assessments to pay losses.
- 6. The amount paid out for all other purposes, stating in detail what purpose.
- 7. Surplus in the treasury, if any.

And should any such benevolent organization refuse or neglect to make an annual report as above required, it shall be deemed an insurance company conducted for profit to its officers, and amenable to the laws governing such companies.

CHAPTER FOUR.

HOME LIFE AND ACCIDENT INSURANCE COMPANIES.

Article	Article
"Life" and "accident" insurance companies defined 3096a	Stockholders, meetings of..... 3096n
Who may form such companies..... 3096b	Limitations on the powers of..... 3096o
Name of company..... 3096c	Home company may reinsure..... 3096p
Capital stock; how paid..... 3096d	Dividends; how declared..... 3096q
Period of incorporation..... 3096e	Annual statements shall show what..... 3096r
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Attorney-general to approve charter..... 3096g	Certified copies of permits to issue, when..... 3096t
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Capital stock; certificate of payment..... 3096i	Actions by and against home companies..... 3096v
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Amendment of charter..... 3096k	Laws applicable to home companies..... 3096x
Paid in capital stock to consist of what..... 3096l	Laws repealed..... 3096y
Extent to which real estate may be acquired..... 3096m	

"Life" and "accident" insurance companies and terms incident thereto defined. (Act of 1895, p. 97.)

Article 3096a. A life insurance company shall be deemed to be a corporation doing business under any charter involving the payment of money or other thing of value to families or representatives of policy holders, conditioned upon the continuance or cessation of human life, or involving an insurance, guaranty, contract or pledge for the payment of endowments or annuities. An accident insurance company shall be deemed to be a corporation doing business under any charter involving the payment of money or other thing of value to families or representatives of policy holders, conditioned upon the injury, disablement or death of persons resulting from traveling or general accidents by land or water. When consistent with the context and not obviously used in a different sense, the term "company" or "insurance company," as used herein, includes all corporations engaged as principals in the business of life, accident, or life and accident insurance. The term "home company," as used herein, designates those life, accident, or life and accident insurance companies incorporated and formed in this state. The term "home office" of a company means its principal office within the state or country in which it is incorporated or formed. The term "member" of a company shall include every person having a right to vote at any meeting of stockholders, other than a person having a right to vote only upon a proxy. The term "directors" or "board of directors" includes the persons duly appointed or designated to manage the affairs of the company. The "insured" or "policy holder" is the person on whose life a policy of insurance is effected. The "beneficiary" is the person to whom a policy of insurance effected is payable. By the term "net assets" is meant the funds of the company available for the payment of its obligations in this state, and also including uncollected and deferred premiums not more than three months due on policies actually in force, after deducting from such funds all unpaid losses and claims, and claims for losses, and

all other debts, exclusive of capital stock. The "profits" of a company are that portion of its funds not required for the payment of losses and expenses, nor set apart for any other purpose allowed by law.

Art. 3096b. Any three or more citizens of this state, who shall be known as incorporators, may associate to form a home company under the provisions of this chapter for the purpose of transacting the business of a life insurance company, the business of an accident insurance company, or the business of both a life and accident insurance company; provided, that such accident insurance business shall be made a separate department of the business of a life insurance company undertaking it.

Who may form home-life or accident insurance companies.
Ib.

Art. 3096c. No home company shall adopt a name that so closely resembles the name of an existing corporation as to be likely to mislead the public, and the words "Insurance Company" must be a part of the title.

Name of company.
Ib.

Art. 3096d. The capital stock of a home company may be divided into classes or series, and each class or series shall be paid in at such times and in such amounts as the subscription contract or the stockholders may require; provided, no company shall do or advertise to do business with a less capital stock paid in than one hundred thousand dollars. If default shall be made in the payment of any installment as required, all previous payments made thereon shall be forfeited for the use of the company after the expiration of sixty days from the date of the notice sent to such defaulting stockholder. Such forfeited stock may be reissued or subscription therefor may be received as in the case of stock not issued or subscribed for. Such capital stock shall be divided into shares, or fractional parts thereof, and the par value of each share shall be such an amount as shall be named in its charter or any amendment thereto. The stockholders of any such company may increase or reduce the amount of its capital stock or the number of its shares to any amount; provided, that the capital stock shall in no case be reduced to less than one hundred thousand dollars paid in. A statement of any such increase or reduction shall be signed and acknowledged by two officers of the company, and filed and recorded in the same manner as the charter. Any such company may, after any such increase or reduction, require the return of the original subscription receipts or certificates of stock held by each stockholder in exchange for new certificates it may issue in lieu thereof. The shares or fractional parts of shares of capital stock of such company shall be transferable on the books of the company according to law and the by-laws of the company by the owner in person or his authorized attorney, and every person becoming a stockholder by such transfer shall, in proportion to his shares or parts of shares, succeed to all rights and liabilities of prior stockholders. No share, or part thereof, however, of capital stock shall be transferred until all previous calls made and due thereon shall have been paid in.

Capital stock, how paid, etc.
Ib.

Art. 3096e. Any home company may incorporate under this chapter for a period of time not exceeding five hundred years, and at the expiration of any term may renew its charter in accordance with then existing laws.

Period for which home company may incorporate.
Ib.

Art. 3096f. Not less than three of the incorporators of a home company shall sign and acknowledge before any officer authorized to take acknowledgments to deeds, and file in the office of the insurance commissioner, the charter adopted by them, which shall specify

Charter shall specify what.
Ib.

the names of the corporators and the proposed name of the company; the location of its home office; the kinds of insurance it proposes to transact; the period of time it is to exist; the amount of its capital stock, and the number and par value of the shares; and such other provisions not inconsistent with law that they may deem proper to insert therein.

Proposed charter shall be submitted to attorney-general for approval.
Ib.

Art. 3096g. Whenever such corporators shall have filed the proposed charter with, and paid a charter fee of twenty dollars to, the insurance commissioner, it shall be his duty to submit such charter to the attorney general of this state for examination, and if it shall be found by him to be in accordance with law, he shall so certify and deliver back to the commissioner.

Charter shall be recorded when approved.
Ib.

Art. 3096h. The commissioner shall, upon receipt of such charter, approved by the attorney general, record the said charter and certificate of the attorney general in a book kept for that purpose, and shall, upon receipt of fee for certified copy of charter, of one dollar, furnish a certified copy of such charter and certificate of attorney general to the corporators, upon receipt of which they shall be a body politic and corporate, and may proceed to complete organization of the company. The corporators shall have the direction of the affairs and the perfecting the organization of the company until they shall call a special meeting of the stockholders, and until such meeting has been held for the purpose of adopting by-laws, electing directors, officers, and transacting general business.

Certificate of payment of capital stock.
Ib.

Art. 3096i. Upon being notified that at least one hundred thousand dollars of the capital stock named in the charter of the company has been paid in, the commissioner shall make an examination, and if it shall be found that such amount of the paid in capital stock has been invested in securities authorized by this chapter, he shall so certify. The corporators, or two officers of such company, shall be required to certify under oath to the commissioner that the money, notes, stocks, bonds, mortgages, deeds of trust or other property exhibited to him are bona fide property of the company, and are worth in cash the amounts which they represent.

When permit to do business may issue.
Ib.

Art. 3096j. When the corporators have fully complied with the requirements of this chapter the commissioner shall, upon the receipt of the certificate of authority fee of one dollar, furnish the company authority to commence business and issue policies as proposed in its charter.

Amendment of charter.
Ib.

Art. 3096k. Any home company may, by vote of the stockholders, change or amend its charter, and such alteration or amendment shall be signed by two officers of the company, and filed and recorded in the same manner as the original charter.

Paid in capital stock to consist of what.

Art. 3096l. The paid in capital stock of a home company shall consist in lawful money or bonds of the United States, or in bonds of this state, or any county or incorporated town or city thereof, or the stock of any national bank, or 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 and the policy or policies transferred to the company taking such mortgage. The accumulations or surplus money of the company over and above its paid in capital stock may be invested in or loaned upon the pledges of public stocks or bonds of the United States, or any county or school district, or incorporated city or town, or of any of the states, or stocks or bonds or other evidences of indebtedness

of any solvent dividend paying corporation, except its own stock, or in bills of exchange, or other commercial notes or bills, or in the reserve values of its own policies, or in first mortgages upon unincumbered real estate situated in this state, the title to which is valid; provided, that the current market value of such stocks, bonds, mortgages, 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. The company may sell, change, or reinvest its capital stock or accumulations in like securities as occasion may from time to time require.

Art. 3096m. No home company shall purchase or hold real estate except for the following purposes and in the following manner: The building in which it has its home office and the land upon which it stands; such as shall be requisite for its accommodation in the transaction of its business in this state, or any other state or country; such as shall have been acquired for the accommodation of its business; such as shall have been mortgaged to it in good faith by way of security for loans previously contracted or for moneys due; such as shall have been conveyed to it in satisfaction of debts previously contracted in the course of its dealings; such as shall have been purchased at sales upon judgments, decrees, or mortgages obtained or made for such debts.

Extent to which real estate may be acquired.
Ib.

Art. 3096n. The first meeting of stockholders of the home company shall be held before the company is authorized to commence business. Annual meetings shall be held at such time and place as the stockholders may determine. At any meeting of stockholders each stockholder shall be entitled to one vote for each share of the subscribed capital stock of such company standing in his name on the books of the company, which vote may be given in person or by proxy. A majority of the subscribed capital stock of such company represented at any meeting of stockholders shall constitute a quorum. The stockholders shall have authority to provide for the government of the affairs of such company by any number of directors, committees, officers, or other agencies, and may exercise or confer such powers and may perform or prescribe such duties in such manner as they deem proper, not inconsistent with law or the charter of such company.

Stockholders' meetings, etc.
Ib.

Art. 3096o. Any stockholder, director, member of a committee, officer or clerk of a home company who is charged with the duty of handling or investing its funds shall not deposit or invest such funds except in the corporate name of such company; shall not borrow the funds of such company; shall not be interested in any way in any loan, pledge, security or property of such company, except as stockholder; shall not take or receive to his own use any fee, brokerage, commission, gift or other consideration for or on account of a loan made by or on behalf of such company.

Limitations on the powers of stockholders, directors, officers and employees.
Ib.

Art. 3096p. Any home company may reinsure in other companies authorized to do business in this state any risk or part of a risk which it may take for its own benefit.

Home company may reinsure in other companies.
Ib.

Art. 3096q. No home company shall make dividends to its policy holders or stockholders, except from the profits arising from the business of such company.

Dividends may be declared only on profits.
Ib.

Art. 3096r. Each home company shall annually, after the first day of January of each year, and before the renewal of its authority to transact business, prepare, under oath of two of its officers, and

Annual statements shall show what.
Ib.

deposit in the office of the insurance commissioner a statement, accompanied with the fee for filing annual statement of ten dollars, showing the condition of the company on the thirty-first day of December then next preceding, which shall include a statement in detail showing class and character of its assets and liabilities on that day, the amount and character of business transacted, moneys received, and how expended during the year, and the number and amount of its policies in force on that day in Texas, and the total amounts of all policies in force; provided, that the commissioner of insurance may from time to time make such changes in the forms and requirements of the annual statement of companies as shall seem to him best adapted to elicit from the companies a true exhibit of their condition, and such statement shall also contain and set forth an exhibit of the investments of such company.

Renewal certificate; when to issue.
Ib.

Art. 3096s. Whenever any home company shall have filed its annual statement in accordance with the preceding article, the insurance commissioner shall, upon receipt of certificate of authority fee of one dollar, issue a renewal certificate of authority to such company, which shall expire on the last day of December of the current year.

Certified copies of permits to issue, when.
Ib.

Art. 3096t. Any home company having received authority to transact business in this state, may, upon payment of certified copy of certificate of authority fee of fifty cents each, procure from the commissioner, upon written request, a certified copy of its certificate of authority for each of its agents in this state.

Commissioner of insurance to examine into financial condition, etc.
Ib.

Art. 3096u. The insurance commissioner shall, at the end of each five years, or oftener if he deems it necessary, in person or by one or more examiners, commissioned in writing, visit each home company and examine its financial condition, and its ability to meet its liabilities. He shall have a free access to all the books and papers of the company or agents thereof, and shall have power to summon and examine under oath the officers, agents and employees of such company, and any other person within the state of Texas. He may revoke or modify any certificate of authority issued by him, when any conditions prescribed by law for granting it no longer exist. The expense of every such examination shall be paid by the company so examined, but the commissioner shall not make any charge for his personal services, except for traveling or other actual expenses.

Actions by and against home companies.
Ib.

Art. 3096v. Actions may be maintained by a home company against any of its policy holders, stockholders or other persons for any cause relating to the business of such company, and actions may also be prosecuted and maintained by any policy holder, or the heirs or legal representatives of such company against the company for losses which accrue on any risk, if payment is withheld for more than three months after the losses become due; but no action shall be brought or maintained by any person other than the insurance commissioner of this state for the enjoining, restraining or interfering with the prosecution of the business of the company.

Law not to apply to mutual benefit organizations, etc.

Art. 3096w. Nothing in this chapter shall be construed to affect or in any way apply to mutual benefit organizations doing business in this state through lodges, councils or chapters, such as the Order of Chosen Friends, Knights of Honor, Progressive Endowment Guild, Knights of Maccabees, Knights of Pythias and kindred organizations, or to benevolent associations organized and chartered under title XXI. of the Revised Statutes, or which are organized under the

laws of any other state, which have no capital stock, and whose relief funds are created and sustained by assessments upon the members of said organization in accordance with their several by-laws and regulations; provided, that the principal officer of every such benevolent association (not conducted by lodges, a quorum of whose members meet in their respective lodge rooms at least once each month) shall be required to make an annual statement under oath to the department of insurance on the first day of January of each year, or within sixty days thereafter, showing:

1. Name of organization and where located.
2. Name and residence of officers.
3. The salary paid each officer.
4. The gross amount of money received during the year, and from what sources.
5. The amount paid to policy holders on assessments to pay losses.
6. The amount paid out for all other purposes, stating in detail what purposes.
7. Surplus in the treasury, if any.
8. The amount of reserve fund, if any, and how invested.

And should any such benevolent organization refuse or neglect to make an annual report as above required, it shall be deemed an insurance company conducted for profit to its officers, and amenable to the laws governing such companies.

Art. 3096x. The laws relating to and governing corporations in general shall apply to and govern home companies in so far as the same are pertinent and not in conflict with the provisions of this chapter. Laws governing corporations in general applicable.

Art. 3096y. So much of chapters one, two and three of title LVIII. as relate to home life and accident insurance companies, and so much of laws and parts of laws that are inconsistent with the provisions of this chapter, are hereby repealed; provided, that nothing herein shall be construed to repeal article 3050 (2932) of title LVIII. (LIII.) of the Revised Civil Statutes of Texas; provided, further, that the net reserve value on the first three years' existence of any policy of insurance issued by a home company, as computed by said article 3050 (2932) of title LVIII. (LIII.), shall not be accounted a liability of the company. Laws repealed.

TITLE LIX.

Interest.

	Article	Article
Definition of interest.....	3097	Ten per cent may be stipulated for..... 3103
Legal interest	3098	Contracts for a greater rate than ten
Conventional interest	3099	per cent void.....3104
Distinction between the two.....	3100	Judgments to bear six per cent when
Six per cent in absence of agreement...3101		not otherwise stipulated.....3105
Six per cent on open accounts where no		Usurious interest recovered, when.....3106
rate is agreed upon.....3102		Usury, how pleaded.....3107

Definition of "interest." Article 3097. [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.

"Legal interest." Art. 3098. [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.

"Conventional interest." Art. 3099. [2974] "Conventional interest" is that interest which is agreed upon and fixed by the parties to a written contract, not to exceed ten per cent per annum.

Distinction between legal and conventional recognized by law. Art. 3100. [2975] The distinction between legal and conventional interest shall be known and recognized by the laws of this state.
(Act of Jan. 18, 1840.)
P. D. 3939.

Six per cent the legal rate. Art. 3101. [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 six per cent per annum from and after the time when the sum is due and payable.
(Acts of 1892, S. S., pp. 4, 5.)

Six per cent on open accounts, when. Art. 3102. [2977] On all open accounts, when no specified rate of interest is agreed upon by the parties, interest shall be allowed at the rate of six per cent per annum from the first day of January, after the same are made.
Ib. §2.

Ten per cent the conventional rate. Art. 3103. [2978] The parties to any written contract may agree to and stipulate for any rate of interest not exceeding ten per cent per annum on the amount of the contract.
Ib.

Contracts for greater per cent void. Art. 3104. [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 ten per cent per annum, shall be void and of no effect for the amount or value of the interest only; but the principal sum of money or value of the contract may be received and recovered.
Ib.

Judgments, rate of interest on. Art. 3105. [2980] All judgments of the several courts of this state shall bear interest at the rate of six 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 six per cent per annum and not exceeding ten per cent per annum, in which case the judgment shall bear the same rate of interest specified in such contract and after the date of such judgment.
Ib.

Art. 3106. (2981a) If usurious interest, as defined by the preceding articles, shall hereafter be received or collected, the person or persons paying the same, or their legal representatives, may by action of debt, instituted in any court of this state having jurisdiction thereof, within two years after such payment, recover from the person, firm or corporation receiving the same, double the amount of the interest so received or collected.

May recover
usurious in-
terest paid.
1b.

Art. 3107. [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, how
pleaded.

TITLE LX.

Irrigation.

CHAPTER ONE.

REGULATING THE MODE OF IRRIGATION.

	Article		Article
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May license irrigation.....	3111		

Commissioners' court to regulate irrigation.
(Act Feb. 10, 1882, p. 80, §1.)
P. D. 3945.

Article 3108. [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. 3109. [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 of delinquent.
Ib. §3.
P. D. 3947.

Art. 3110. [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. 3111. [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. 3112. [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 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. 3113. [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. 3114. [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.

GENERAL PROVISIONS.

Article	Article
Unappropriated waters public property.....	Who may appropriate; construction to begin.....
Purposes for which storm or rain waters diverted.....	"Completion" defined.....
Flow and overflow of running waters diverted.....	Appropriator only to divert.....
Purposes of appropriation.....	Corporations under this chapter.....
Priority of appropriation.....	Right of way over public lands.....
Statement of route of canal, etc., to be filed.....	Surplus water to be returned.....
Claimant's right dates from when.....	Right of way across highways.....
	No cause of action for damages, when.....
	Liens for water rent.....
	Corporations may acquire lands, how.....

Unappropriated waters public property. (Acts 1895, p. 25.)

Article 3115. The unappropriated waters of the ordinary flow or underflow of every running or flowing river or natural stream, and the storm or rain waters of every river or natural stream, canyon, ravine, depression or water-shed within those portions of the state of Texas in which by reason of the insufficient rainfall or by reason of the irregularity of the rainfall, irrigation is beneficial for agricultural purposes, are hereby declared to be the property of the public, and may be acquired by appropriation for the uses and purposes and in the manner as hereinafter provided.

Purposes for which storm or rain waters be diverted. Ib.

Art. 3116. The storm or rain waters, as described in the preceding article, may be held or stored in dams, lakes or reservoirs built and constructed by a person, corporation or association of persons for irrigation, mining, milling, the construction of waterworks for cities and towns, or stockraising, within those portions of Texas described in the foregoing article, and all such waters may be diverted by the person, corporation or association of persons owning or controlling such dam, reservoir or lake for irrigation, mining, milling, the construction of waterworks for cities and towns, and stockraising.

Ordinary flow or underflow of running waters may be diverted, etc. Ib.

Art. 3117. The ordinary flow or underflow of the running water of every natural river or stream within those portions of Texas described in article 3115 may be diverted from its natural channel for irrigation, mining, milling, the construction of waterworks for cities and towns, or stockraising; provided, that such flow or underflow of water shall not be diverted to the prejudice of the rights of the riparian owner without his consent, except after condemnation thereof in the manner as hereinafter provided.

Purposes of appropriation. Ib.

Art. 3118. The appropriation of water must be either for irrigation, mining, milling, the construction of waterworks for cities and towns, or stockraising.

Priority of appropriation. Ib.

Art. 3119. As between appropriators the first in time is the first in right.

Statement of route of canal, etc., to be filed. Ib.

Art. 3120. Every person, corporation, or association of persons who have constructed or may hereafter construct any ditch, canal, reservoir, dam or lake for the purposes named in this chapter, and taking the water from any natural stream, storage reservoir, dam or lake, shall within ninety days after this chapter goes into effect, or within ninety days after commencement of such construction, file and cause to be recorded in the office of the county clerk of the county where the headgate of such ditch or canal may be situated or to which said county may be attached for judicial purposes, in a well-bound book to be kept by said clerk for that purpose, a sworn

statement in writing showing approximately the number of acres of land that will be irrigated, the name of such ditch or canal, the point at which the headgate thereof is situated, the size of the ditch or canal, in width and depth, and the carrying capacity thereof in cubic feet per second of time, the name of said stream from which said water is taken, the time when the work was commenced, the name of the owner or owners thereof, together with a map showing the route of such ditch or canal; and when the water is to be taken from a reservoir, dam or lake, the statement above provided for shall show in addition to the ditch and other things provided for, the locality of the proposed dam, reservoir, or lake, giving the names or numbers of the surveys upon which it is to be located, its holding capacity in cubic feet of water, the acreage and surface feet of land that will be covered, and the limits of such lake, reservoir or dam, and the area of the watershed from which the storm or rain water will be collected.

Art. 3121. By compliance with the provisions of the preceding articles the claimant's right to the use of the water relates back to the time when the work of excavation or construction was commenced on said ditch, canal, reservoir, dam or lake; provided, that a failure to file such statement shall in no wise work a forfeiture of such heretofore acquired rights, nor prevent such claimants of such heretofore acquired rights from establishing such rights in the courts.

Time from when claimant's right dates.
Ib.

Art. 3122. Any person, firm, association of persons or corporation may acquire the right to and appropriate for irrigation purposes the unappropriated waters of the ordinary flow or underflow of every running or flowing river or natural stream, and the storm or rain water of every river or natural stream, canyon, ravine, depression or watershed within those portions of the state referred to in article 3115, by filing a sworn statement in writing, to be recorded as provided in article 3120, declaring his or its intention of appropriating such water. Said statement shall also show approximately the number of acres of land proposed to be irrigated, the name of such ditch or canal, the point at which the headgate thereof will be situated, the size of the ditch or canal in width and depth, and the carrying capacity thereof in cubic feet per second of time, the name of the person, firm, association or corporation appropriating such water, the name of the stream, and shall attach to such statement a map showing approximately the proposed route of such ditch or canal; and when the water sought to be appropriated or acquired is storm or rain water, the statement above required shall also show or describe the locality of the proposed dam, reservoir, or lake by giving the names or numbers of the surveys upon which it is to be located, and approximately the following, that is to say, its holding capacity in cubic feet of water, the acreage of land that will be covered and the area of the watershed from which the storm or rain waters will be collected; provided, any person, association of persons or corporation who has heretofore had a survey made of the proposed route of his or its ditch shall have a preference right at any time within ninety days from the time this chapter shall take effect to file the statement hereinbefore required for the appropriation of water. Within ninety days next after filing of said statement the party or corporation claiming the right to appropriate the water shall begin actual construction of the proposed ditch, canal, dam, lake or reservoir, and shall prosecute the work thereon diligently and continuously to completion.

Who may appropriate; construction to begin.
Ib.

“Comple-
tion” defined.
Ib.

Art. 3123. “Completion” as used in the preceding section is here-
by defined to be the conducting of the water in the main canal to
the place of the intended use.

The appro-
priator only
to divert
water.
Ib., p. 27.

Art. 3124. Whenever any person, corporation or association of
persons shall become entitled to the use of any water of any river,
stream, canyon or ravine, or the storm or rain water hereinbefore
described, it shall be unlawful for any person, corporation or asso-
ciation of persons to appropriate or divert any such water in any
way, except that the owner whose land abuts on a running stream
may use such water therefrom as may be necessary for domestic
purposes, and any one whose land may be located within the area
of the watershed from which the storm or rain waters are collected
may construct on his land such dams, reservoirs or lakes as may
be necessary for the storage of water for domestic purposes for such
owner of land; provided, that the excess of such water not used or
contracted for use by such person, corporation or association of
persons for irrigation, mining, milling, waterworks for cities or
towns, or stockraising, may be appropriated by any person, corpo-
ration or association of persons in the manner hereinbefore provided
for the appropriation of water.

Corporations
may be
formed to
operate under
this chapter.
Ib.

Art. 3125. Corporations may be formed and chartered under the
provisions of this chapter and of the general corporation laws of
the state of Texas, for the purpose of constructing, maintaining and
operating canals, ditches, flumes, feeders, laterals, reservoirs, dams,
lakes and wells, and of conducting and transferring water to all
persons entitled to the same for irrigation, mining, milling, to cities
and towns for waterworks, and for stockraising, and for the pur-
pose of building storage reservoirs for the collection and storage
of water for the purposes before mentioned. All such corporations
shall have full power and authority to make contracts for the sale of
permanent water rights, and to have the same secured by liens on
the land or otherwise, and to lease, rent or otherwise dispose of the
water controlled by such corporation for such time as may be agreed
upon, and in addition to the lien on the crops hereinafter provided
for, the lease or rental contract may be secured by a lien on the land
or otherwise. All persons who own or hold a possessory right or
title to land adjoining or contiguous to any canal, ditch, flume or
lateral constructed and maintained under the provisions of this
chapter, and who shall have secured a right to the use of water in
said canal, ditch, flume, lateral, reservoir, dam or lake, shall be
entitled to be supplied from such canal, ditch, flume, lateral, dam
or lake with water for irrigation of such land, and for mining, mill-
ing and stockraising in accordance with the terms of his or their con-
tract; provided, that if the person, association or corporation owning
or controlling such water, and the person who owns or holds a
possessory right or title to land adjoining or contiguous to any canal,
ditch, flume or lateral constructed and maintained under the pro-
visions of this chapter fail to agree upon a price for a permanent
water right, or for the use or rental of the necessary water to irri-
gate the land of such person and for mining, milling and stockrais-
ing, such person, firm, association or corporation shall, nevertheless,
if such person, firm, association or corporation has or controls any
water not contracted to others, furnish the necessary water to such
person to irrigate his lands, and for mining, milling and stock-
raising, at such prices as may be reasonable and just; provided, fur-
ther, that in case of shortage of water from drought, accident or

other cause, the water to be distributed shall be divided among all consumers pro rata, according to the amount he or they may be entitled to, to the end that all shall suffer alike, and preference be given to none. The sale of the permanent water right shall be an easement to the land and pass with the title thereof, and the owner thereof shall be entitled to the use of the water upon the terms provided in his or their contract with such person or corporation, or in case no contract is entered into, then at just and reasonable prices. Any instrument of writing providing a permanent water right shall be admitted to record in the same manner as other instruments relating to the conveyance of land.

Art. 3126. All corporations and associations formed for the purpose of irrigation, mining, milling, the construction of waterworks for cities and towns, and stockraising, as provided in this chapter, are hereby granted the right of way, not to exceed one hundred feet in width, over all public, public free school, university and asylum lands of the state, with the use of the rock, gravel and timber on the right of way for construction purposes, and may obtain the right of way over private lands by contract. Any such corporation or association of persons, or any city or town, may also obtain the right of way over private lands, and also the land for dam sites and storage reservoirs and the water belonging to the riparian owner by condemnation, by causing the damages for any private property appropriated by any such persons, corporations or associations to be assessed and paid for as provided in cases of railroads, and the delay necessary to condemn and acquire the property needed for the ditch, dam site, reservoir and sewers for water supply and drainage or water of the riparian owner shall not work to the prejudice of the person, corporation or association of persons constructing such ditch, canal, lake, reservoir or dam, and shall not be taken into account in estimating the time for the completion of such work.

Right of way
over public
lands.
Ib., p. 21.

Art. 3127. All surplus water of a running stream not used or disposed of as provided in the preceding articles shall be conducted back to the stream from which it was taken through a ditch or canal constructed under the provisions of this chapter, or through a natural channel leading back to the stream.

Surplus water
to be re-
turned.
Ib.

Art. 3128. All said persons, corporations and associations shall have the right to run along or across all roads and highways necessary in the construction of their work, and shall at all such crossings construct and maintain necessary bridges for the accommodation of the public, and shall not impair the usefulness of such road or highway; provided, that if any public road or highway or public bridges should be upon the ground necessary for the dam site, reservoir or lake, it shall be the duty of the commissioners' court to change said road and to remove such bridges that the same may not interfere with the construction of the proposed dam, reservoir or lake; provided, further, that the expense of making such change shall be paid by the person, firm or corporation owning such dam site, lake, reservoir or canal.

Right of way
across high-
ways, etc.;
conditions
precedent
thereto.
Ib.

Art. 3129. Unless such person, association of persons, or corporation shall fence their said ditch, canal, reservoir, dam or lake, and keep the same securely fenced, then there shall accrue in their favor no cause of action against owners of livestock for any trespass thereon.

No cause of
action for
damages,
when.
Ib.

Art. 3130. Every person, corporation or association of persons which has heretofore constructed or which may hereafter construct

Liens for
water rent.
Ib.

any ditch, canal, dam, lake or reservoir for the purpose of irrigation, and who shall lease or rent the water from said ditch, canal, dam, lake or reservoir to any person or association of persons or corporation owning any lands subject to irrigation from any such ditch, canal, lake, dam or reservoir, such person, corporation or association of persons owning such ditch, canal, lake, dam or reservoir shall have a preference lien, superior to every other lien, upon the crop or crops raised upon the land thus irrigated under such lease or contract.

Conditions
under which
corporations
may acquire
lands.
Ib., p. 27.

Art. 3131. Any corporation organized under the provisions of the general laws of this state or the provisions of this chapter, for the purpose of irrigation, shall have the power to acquire lands by voluntary donation or purchase or in payment of stock or water rights, and to hold and dispose of all such land and other property, and to borrow money for the construction, maintenance and operation of its canals, ditches, flumes, feeders, reservoirs, dams, lakes and wells, and may issue bonds and mortgage its corporate and other property and franchises to secure the payment of any debts contracted for same; provided, no corporation shall issue stock or bonds except for money paid, labor done, or property actually received, and all fictitious increase of stock or indebtedness shall be void; and provided, further, all lands acquired by said corporation, except such as are used for the construction, maintenance and operation of said canals, ditches, laterals, feeders, reservoirs, dams, lakes and wells, shall be alienated within fifteen years from the date of acquiring said lands, or be subject to judicial forfeiture.

[Note.—This chapter supersedes that of the same number of the codification of 1893, preserving the article numbers.]

TITLE LXI.

Jails.

Article	Article
Commissioners' court to provide.....3132 Sheriff keeper, etc.....3133 Shall be constructed to enable executions to be had in death penalty.....3134	Commissioners to see that jails are prop- erly kept3135 U. S. marshal may use jails.....3136 Marshal liable for fees.....3137

Article 3132. [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. 3133. [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. 3134. [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. 3135. [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. 3136. [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. 3137. [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.

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. 49.

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.

TITLE LXII.

Juries in Civil Cases.

CHAPTER ONE.

JURIES—THEIR QUALIFICATIONS AND EXEMPTIONS.

	Article	Article
Who are competent jurors.....	3138	Where several fire companies in one town
Who are disqualified in general.....	3139	List of members selected to be delivered to the clerk.....
Exceptions to certain cases.....	3140	3144
Jurors disqualified in certain cases.....	3141	
Who are liable to jury service.....	3142	

Who are competent jurors. Article 3138. [3009] All male persons over twenty-one years of age are competent jurors unless disqualified under some provision of this chapter.

Who are disqualified, in general. Art. 3139. [3010] No person shall be qualified to serve as a juror who does not possess the following qualifications:

(Act Aug. 1, 1876, p. 78, §§1, 2, 26.)
(Const., art. 16, §13.)

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 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.

Exception in certain cases. Art. 3140. [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.

Jurors disqualified to try a particular case. Art. 3141. [3012] The following persons shall be disqualified to serve as jurors in any 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. 3142. [3013] All competent jurors are liable to jury service, except the following persons:

Who are liable to jury service. Who are exempt 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 last preceding United States census, the active members of organized fire companies, not to exceed twenty to each one thousand of such inhabitants.

Art. 3143. [3015] If there be more than one organized fire company in such town or city, the whole number of exemptions provided for under subdivision 10 of the preceding article shall be equally divided between such companies.

Where several fire companies in one town, etc. *Ib.* §2.

Art. 3144. [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.

List of members selected to be delivered to the clerk. *Ib.* §2.

CHAPTER TWO.

JURY COMMISSIONERS FOR THE DISTRICT COURT, APPOINTMENT, QUALIFICATION, ETC.

Article	Article
Jury commissioners3145	Failure of commissioners, etc.....3150
Shall serve but once in each year.....3146	To be instructed in their duties.....3151
Commissioners to be notified.....3147	How they shall be kept.....3152
Failing to attend shall be fined.....3148	Clerk to furnish stationery, etc.....3153
Oath of jury commissioners.....3149	To have use of assessment rolls.....3154

Article 3145. [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:

Jury commissioners, appointment and qualifications. (Act Aug. 1, 1876, p. 79, §4.)

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.

Art. 3146. [3018] The same person shall not act as jury commissioner more than once in the same year.

Commissioners to be notified of their appointment, etc.
Ib. §4.

Art. 3147. [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.

Failing to attend, shall be fined.
Ib. §5.

Art. 3148. [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 dollars nor more than one hundred dollars.

Oath of jury commissioners.
Ib. §4.

Art. 3149. [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 juryman whom you believe to be unfit and not qualified; that you will not make known to any one the name of any juryman selected by you and reported to the court; that you will not, directly or indirectly, converse with any one selected by you as a juryman 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."

Failure of commissioners, etc.
Ib. §13.

Art. 3150. [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.

To be instructed as to their duties.
Ib. §6.

Art. 3151. [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 kept free from intrusion and not to separate.
Ib.

Art. 3152. [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 have completed the duties required of them.

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. 3153. [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 3171, and shall take their receipt therefor, showing whether or not such seal remained unbroken.

To have use of assessment roll.
(Act Aug. 1, 1876, p. 79, §6.)

Art. 3154. [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.

CHAPTER THREE.

JURY COMMISSIONERS FOR THE COUNTY COURT,
APPOINTMENT, ETC.

	Article	Article
Jury commissioners, appointment and qualification, powers and duties.....	3155	Oath3156 To select jurors for six months.....3157

Article 3155. [3027] The county court shall at its first term after the thirty-first day of December and the thirtieth day of June of 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.

Art. 3156. [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."

Art. 3157. [3029] Such commissioners shall select jurors for all the terms of the county court to be holden within six months next after the adjournment of the first term of said court after the said thirty-first day of December and the thirtieth day of June of each year, 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.....	3158	And by him to the commissioners for his court3167
Drawing of jurors, how conducted.....	3159	Persons included in such lists not to be selected as jurors in county court.....
List to be certified, sealed, etc.....	3160	3168
To be delivered to the judge.....	3161	County court commissioners to make out lists for district court.....
And by him to the clerk.....	3162	3169
Clerk and deputies to be sworn.....	3163	To be delivered to district clerk.....
Same	3164	3170
District court commissioners to make out jury list for county court.....	3165	And by him to commissioners for his court
Which shall be delivered to the county clerk	3166	3171
		Persons included in such lists exempt.....
		3172
		Lists of jurors to be destroyed.....
		3173

Article 3158. [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. 3159. [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. 3160. [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 the 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. 3161. [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. 3162. [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.

Clerk and deputies to be sworn.
Ib. §§8, 28.

Art. 3163. [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."

Same.
Ib. §8.

Art. 3164. [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.

District court commissioners to make out jury lists for county court.
(Act Aug. 18, 1876, p. 170, §1.)

Art. 3165. [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.

Which shall be delivered to the county clerk.
Ib. §2.

Art. 3166. [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 com-

missioners of the county court next hereafter appointed in and for this county.”

Art. 3167. [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. 3168. [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. 3169. [3041] The jury commissioners of 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. 3170. [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 clerk.
Ib. §6.

Art. 3171. [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.

Art. 3172. [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.

Persons included in such lists not to be selected as jurors in district court.
Ib. §8.

Art. 3173. [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.

Lists of jurors to be destroyed.
Ib. §9.

CHAPTER FIVE.

SELECTED JURORS—HOW SUMMONED, ETC.

	Article		Article
Clerk to make out jury lists and deliver to sheriff	3174	Notice to jurors, how served.....	3176
Sheriff to notify jurors.....	3175	Time of service.....	3177
		Sheriff's return	3178

Clerk to make out jury lists and deliver to sheriff. (Act Aug. 18, 1876, p. 171, §10.) Article 3174. [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 list 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. 3175. [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. 3176. [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. 3177. [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. 3178. [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.....	3179	May be adjourned.....	3183
If not selected on day appointed may be subsequently done.....	3180	Oath to be administered to the sheriff when jurors not selected are to be summoned by him.....	3184
If practicable, to be of jurors selected by jury commissioners.....	3181	Court may hear excuses of jurors.....	3185
May be filled up, how.....	3182	Defaulting jurors to be fined.....	3186

Jurors for the week, how selected. Ib. Article 3179. [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. 3180. [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. 3181. [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. 3182. [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. 3183. [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. 3184. [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 juryman touching any case pending for trial; and that you will not by any means attempt to influence, advise or control any juryman 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. 3185. [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. 3186. [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.	Oath of inability to make deposit. 3195
Must be demanded and jury fee paid. 3188	Cases heretofore entered on jury docket excepted 3196
Time of demand. 3189	Order of court. 3197
Same 3190	Clerk to keep jury docket. 3198
Rules for justice's court elsewhere prescribed 3191	Jury trial day to be fixed. 3199
Call of docket for demands for jury trials. 3192	Application for jury not to be withdrawn, unless, etc. 3200
Same as to appearance docket. 3193	When application withdrawn, court may permit jury fee withdrawn also. 3201
Jury fee 3194	

Right of trial by jury to remain inviolate, subject, etc. (Const., art. 1, §15.)

Article 3187. [3059] The right of trial by jury shall remain inviolate, subject to the following rules and regulations:

Art. 3188. [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.)

- Time of demand. (Act Aug. 18, 1876, p. 171, §11.) Art. 3189. [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.
- Same. Art. 3190. [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 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. 3191. [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. 3192. [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. 3193. [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. 3194. [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. 3195. [3067] The deposit 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. 3196. [3068] The preceding article 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. 3197. [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. 3198. [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. 3199. [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.
- Application for jury not to be withdrawn, unless, etc. Art. 3200. [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. 3201. [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.....	3202	On trial of challenge for cause, evidence to be heard.....	3209
Not allowed, when.....	3203	Certain questions not permissible.....	3210
Challenge to array must be in writing.....	3204	Peremptory challenge	3211
Court shall decide at once.....	3205	Number in district court.....	3212
Proceedings when challenge to array is sustained	3206	In the county court.....	3213
Challenge to a particular juror.....	3207	Challenge to a particular juror made orally	3214
Challenge for cause.....	3208	Court to decide challenges promptly....	3215

Article 3202. [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.

Challenge to the array of jurors.
Ib. p. 83, §25.

Art. 3203. [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. 3204. [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. 3205. [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. 3206. [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.
Ib.

Art. 3207. [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. 3208. [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. 3209. [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. 3210. [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. 3211. [3083] A peremptory challenge is made to a juror without assigning any reason therefor.

Peremptory challenge.

Art. 3212. [3084] Each party to 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.)

In the county court. (Act Aug. 1, 1878, p. 83, §27.) Art. 3213. [3085] Each party to civil suit in the county court shall be entitled to three peremptory challenges.

Challenge to a particular juror made orally, etc. Art. 3214. [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 3220 and 3222.

Court to decide challenges promptly. Art. 3215. [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.

CHAPTER NINE.

FORMATION OF THE JURY FOR THE TRIAL OF A CAUSE.

Article	Article
Clerks to provide a box..... 3216	When number of jurors reduced, etc.... 3221
Shall place names of jurors in the box. 3217	Peremptory challenge to be made..... 3222
Shall draw and record names of jurors. 3218	Lists to be returned to clerk, and jury to be called..... 3223
Where names of full jury not found in the box 3219	Where jury is left incomplete..... 3224
Challenge for cause to be made, when. 3220	Jurors to be sworn..... 3225

Clerks to provide a box for use in drawing jurors. (Act Aug. 1, 1876, p. 82, §21.) Article 3216. [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.

Shall place names of jurors in the box. Ib. Art. 3217. [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. 3218. [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. 3219. [3091] Where 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. 3220. [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. 3221. [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.

Art. 3222. [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.

Peremptory challenge to be made, when.
Ib.

Art. 3223. [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.

Lists to be returned to the clerk and jury to be called.

Art. 3224. [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.

When jury is left incomplete.

Art. 3225. [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.

Jurors to be sworn.

CHAPTER TEN.

OATH OF JURORS IN CIVIL CASES.

	Article		Article
Jury shall be sworn.....	3226		Form of oath.....3227

Article 3226. [3098] Before the trial of any civil cause the jurors shall be sworn by the court, or under its direction.

Jury shall be sworn.
(Act Feb. 13, 1855, §10.)
P. D. 3984.

Art. 3227. [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."

Form of oath.
Ib.
P. D. 3984.

CHAPTER ELEVEN.

JURIES—HOW CONSTITUTED, AND THEIR VERDICTS.

	Article		Article
Jury in district court.....	3228		Jury in the county and justices' courts. 3230
Death or inability of jurors in district court pending trial.....	3229		The entire jury must concur in the verdict3231

Article 3228. [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. 3229. [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.)

Jury in coun- Art. 3230. [3102] The jury in the county courts and in courts
 ty and jus- of justices of the peace shall be composed of six men.
 tices' courts.
 Ib. §27.

Entire jury Art. 3231. [3103] No verdict shall be rendered in any cause ex-
 must concur cept upon the concurrence of all the members of the jury trying the
 in verdict.
 Ib. §19.
 (Const., art.
 5, §13.) same.

CHAPTER TWELVE.

COMPENSATION OF JURORS OF THE DISTRICT AND
 COUNTY COURTS IN CIVIL CASES.

	Article	Article
Pay of jurors.....	3232	Jury scrip receivable at par for all
Certificate of jury service.....	3233	county taxes3234

Pay of jurors. Article 3232. [3104] Each juror in civil cases shall receive two
 (Act Nov. 12, dollars for each day and for each fraction of a day he may serve or
 1866, p. 201, attend as such juror.
 §1.)

Certificate Art. 3233. [3105] The amount due to jurors shall be paid by the
 of jury serv- county treasurer upon the certificate of the clerk of the district or
 ice. county court in which such service was rendered; which certificate
 Ib. shall state the service, when rendered, by whom rendered, and the
 amount due therefor.

Jury scrip re- Art. 3234. [3106] All certificates issued under the provisions
 ceivable at of the foregoing article shall, without further action by any author-
 par for all ity, be receivable at par for all county taxes. The same may be
 county taxes. transferred by delivery, and no rule or regulation made by the com-
 Ib. missioners' 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.

TITLE LXIII.

Landlord and Tenant.

Article	Article
Landlord to have preference lien.....3235	Judgment against sureties.....3245
Tenant not to remove property.....3236	Perishable property sold.....3246
When lien expires.....3237	Citation for defendant.....3247
Lien does not apply to, etc.....3238	Petition.....3248
Removal not a waiver, etc.....3239	Rights of tenant.....3249
Distress warrant.....3240	Tenant shall not sub-let without consent, etc.....3250
Oath and bond.....3241	Owners of residences, storehouses, etc., have preference lien, etc.....3251
Distress warrant.....3242	Distress warrant, how obtained.....3252
Duty of officer.....3243	
Defendant may replevy.....3244	

Article 3235. [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.

Landlords shall have preference lien.
(Act April 4, 1874, p. 55.)
P. D. 7418c.

Art. 3236. [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.

Tenant not to remove property subject.
Ib.

Art. 3237. [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.

When lien expires.
Ib.

Art. 3238. [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.

Does not apply to, etc.
Ib.

Art. 3239. [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.

Removal not a waiver, etc.
Ib.

Art. 3240. [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

Distress warrant.
P. D. 7418d.
(Act to adopt and establish R. C. S., passed Feb. 21, 1879.)

a justice of the peace of the precinct where the premises are situated, or in which the property upon which a lien for rents or advances exists, may be found, or to any justice having jurisdiction of the cause of action, for a warrant to seize the property of such tenant; provided, that when a distress warrant shall be issued by any justice, other than the justice of the peace of the precinct in which the rented premises may be situated, or in which the defendant may reside, such warrant shall be made returnable to, and the affidavit and bond upon which it is issued shall be transmitted by, the justice issuing such distress warrant to some justice of the precinct in which the rented premises may be situated, or in which the defendant may reside.

(Acts of 1881,
p. 98.)

Oath and
bond.
Ib.

Art. 3241. [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 harassing 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.

Distress war-
rant, issued
by whom.

Art. 3242. [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.

Duty of officer.

Art. 3243. [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.

Defendant
may replevy.

Art. 3244. [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.

Art. 3245. [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 sure-
ties.

Art. 3246. [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 and unjustly applied for, or be illegally and unjustly made, which sale shall be conducted as sales under execution.

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

Art. 3247. [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.

Citation for
defendant.
P. D. 74182.

Art. 3248. [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.

Petition.
Ib.

Art. 3249. [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.

Rights of
tenant.
(Act Aug. 14,
1876, p. 137.)

Art. 3250. [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.

Tenants shall
not sub-let
without con-
sent, etc.
Ib.

Owners of buildings to have preference lien, etc. (Acts of 1889, p. 11.)

Art. 3251. All persons leasing or renting any residence, storehouse or other building, shall have a preference lien upon all the property of the tenant in such residence, storehouse or other building, for the payment of the rents due and that may become due; provided, the lien for rents to become due shall not continue or be enforced for a longer period than the current contract year, it being intended by the term "current contract year" to embrace a period of twelve months, reckoning from the beginning of the lease or rental contract, whether the same be in the first or any other year of such lease or rental contract. 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 warrant, how obtained. (Acts of 1879, ch. 119, p. 128.)

Art. 3252. 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 LXIV.

Laws.

CHAPTER ONE.

GENERAL PROVISIONS.

	Article		Article
Enacting clause	3253	When shall take effect.....	3256
Shall contain but one subject, etc.....	3254	Revival of repealed laws.....	3257
No revival, etc., by reference to title....	3255		

Article 3253. [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. 3254. [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. 3255. [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. 3256. [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. 3257. [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. 3.) P. D. 4577.

CHAPTER TWO.

COMMON LAW.

	Article		Article
Common law of England adopted.....	3258	To govern what, and how.....	3259

Article 3258. [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. 3259. [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.	3260	Affecting persons, where published....	3263
Where no newspaper is published, notice, how	3261	Where applicant is a non-resident.....	3264
Notice in more than one county, when.....	3262	Details need not be embraced in notice.....	3265
		Proof of publication in newspaper.....	3266
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Notice of intention to apply for special law, etc. (Const., art. 3, §57.) (Act May 23, 1876, p. 7, §1.)

Article 3260. [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.

Where no newspaper is published, notice, how. Ib.

Art. 3261. [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.

Notice in more than one county, when.

Art. 3262. [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.

Affecting persons shall be published, where. Ib. §2.

Art. 3263. [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.

Where applicant is a non-resident. Ib.

Art. 3264. [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.

Details need not be embraced in notice. Ib. §3.

Art. 3265. [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.

Proof of publication in newspaper. Ib. §4.

Art. 3266. [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 newspapers, accompanied with the printed copy of the notice as published.

Proof of posting. Ib. §4.

Art. 3267. [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.....	3268	Meaning of certain words.....	3270
What shall not vitiate.....	3269		

Article 3268. [3138] The following rules shall govern in the construction of all civil statutory enactments:

General rules of construction.

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. 3269. [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. 3270. [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 XLV.

Legislature.

CHAPTER ONE.

TIME OF MEETING.

	Article
Time of meeting.....	3271

Time of meeting.

Article 3271. The twenty-fifth legislature shall assemble to hold its biennial session on the second Tuesday in January, A. D. 1897, at 12 o'clock m., and the legislature shall meet biennially thereafter on the same day and hour until otherwise provided by law.

CHAPTER TWO.

ORGANIZATION.

	Article		Article
Who may organize the legislature.....	3272	Parties sworn in on any proper evi-	3273
Secretary of state to preside for purpose	3273	dence	3273
of organization	3273	When quorum not present day of meet-	3279
Secretary of state to attend meeting and	3274	ing	3279
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The clerk to call counties in alphabeti-	3275	Election of other necessary officers.....	3281
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Clerk to administer oath.....	3276	ney-general to preside.....	3282
All counties to be called whether election	3276		
returns are made or not.....	3277		

Who may organize the legislature. (Act Aug. 23, 1876, p. 311, §29.)

Article 3272. [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. 3273. [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. Ib.

Art. 3274. [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. Ib.

Art. 3275. [3145] The clerk, under direction of the secretary of state, shall call all the counties in alphabetical order.

Clerk to administer oath. Ib.

Art. 3276. [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.

Art. 3277. [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.

All counties to be called whether election returns are made or not.

lb.

P. D. 5438.

Art. 3278. [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. 3279. [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. 3280. [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. 3281. [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. 3282. [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 LXVI.

Liens.

CHAPTER ONE.

JUDGMENT LIENS.

[Note—For Judgment Liens against Receivers see Title “Courts, Practice In.”]

	Article		Article
Clerk of county court shall keep judgment record	3283	Index shall show, what.....	3288
Clerks of courts shall make and deliver abstracts of judgments.....	3284	Lien of judgments, when.....	3289
Abstract shall show what.....	3285	Lien exists, how long.....	3290
Justice of peace shall deliver abstracts.....	3286	Satisfaction of shown, how.....	3291
Clerks of county courts shall record and index abstracts	3287	Satisfaction of to be entered on judgment record	3292
		Abstracts from United States courts may be recorded, etc.....	3293

Clerk of county court shall keep a judgment record. Article 3283. [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. 3284. [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. 3285. [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. 3286. [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. 3287. [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. 3288. [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. 3289. [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.

Art. 3290. [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.

Lien exists, how long.

Art. 3291. [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. 3292. [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. 3293. [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 certificates 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
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3297	Form of fixing lien on unwritten contracts.....	3308
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3299	Description of property.....	3310
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	Contractor to be furnished by owner with account.....	
	Original contractor to defend suit by sub-contractors, etc.....	
	When indebtedness accrues.....	
	Liens upon equal footing.....	
	Release to be filed by mechanics, etc., when.....	
	Railroad laborers to have lien.....	
	Liens, how foreclosed.....	
	Venue.....	
	Liens cease, when.....	

Article 3294. Any person or firm, lumber dealer or corporation, artisan, laborer, mechanic or sub-contractor who may labor or furnish material, machinery, fixtures or tools to erect any house or improvement or to repair any building or improvement whatever, or furnish any material for the construction or repair of any railroad within this state under or by virtue of a contract with the owner

In favor of whom. (Amend. 1895, p. 194.)

or his agent, trustee, receiver, contractor or contractors, upon complying with the provisions of this chapter shall have a lien on such house, building, fixtures, improvements or railroad, and all its properties, and shall also have a lien on the lot or lots of land necessarily connected therewith, to secure payment for the labor done, lumber, material, machinery or fixtures and tools furnished for construction or repair. The word "improvement," as used herein, shall be construed so as to include wells, cisterns, tanks, reservoirs or artificial pools or lakes made for supplying or storing water, and all pumps, syphons, wind mills or other machinery or appliances used for raising water for stock, domestic use or for irrigation purposes.

When to be filed.
(Acts of 1889,
p. 110.)

Art. 3295. In order to fix and secure the lien herein provided for, it shall be the duty of every original contractor, within four months, and every journeyman, day laborer or other person seeking to obtain the benefits of the provisions of this law, within thirty days after the indebtedness shall have accrued, to file his or their 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; provided, that if such journeyman, day laborer or other person have no written contract, it shall be sufficient for them to file an itemized account of their claim, supported by affidavit, showing that the account is just and correct, and that all just and lawful offsets, payments and credits known to the affiant have been allowed.

Written notice to owner.
(Amend. 1895,
p. 194.)

Art. 3296. Any person, firm or corporation who may furnish any material to any contractor, sub-contractor, agent or receiver, to be used in the erection of any house, building or improvement, or to repair any house, building or improvement, or to construct or repair any railroad or its properties, by giving written notice to the owner or his agent of such house, building or improvement, or the railroad company, its agent or receiver, of each and every item furnished, and by showing how much there is due and unpaid on each bill of lumber or material furnished by said lumberman, corporation or material man under said contract, at any time within ninety days after the indebtedness shall have accrued, may fix and secure the lien provided for in this chapter as to the material furnished at the time or subsequent to the giving of the written notice above provided for, by filing in the office of the county clerk of the county in which such property is situated, and if it be a railroad company in any county through which its road may pass, an itemized account of his or their claim, as provided in this article, and cause the same to be recorded in a book kept by the county clerk for that purpose; provided, that in no case shall the owner be compelled to pay a greater sum for [or] on account of labor performed or material, machinery, fixtures and tools furnished as provided in this chapter than the price or sum stipulated in the original contract between such owner and the original contractor or builder of such house, building, fixtures, improvements or repairs.

Form of fixing lien on un-written contract.
Ib. §4.
(Amend. 1895,
p. 194.)

Art. 3297. If there be no written contract, it shall be the duty of the person seeking to obtain the benefit of this chapter to deliver to the clerk of the county court a sworn account as provided for in articles 3295 and 3296, to be filed and recorded as therein provided, and in such cases when the labor is performed for or the material is furnished to the owner of the building or improvements, or the owner or receiver of any railroad, the following form may be used, and

will be sufficient to fix the meaning contemplated by this chapter:

The State of Texas,

County of —.

A B, affiant, makes oath and says that the annexed is a true and correct account of the labor performed (or material furnished) C D, of — county, Texas, and that the prices thereof as set forth in said account hereto annexed are just and reasonable, and the same is unpaid; that said labor was performed (or material furnished, or both) for said C D at the time in said account mentioned, under and by virtue of a contract between affiant (or affiant's principal) and C D, and that due notice was given by affiant (or his principal) of the labor performed (or material furnished) in accordance with article 3296; and affiant further makes oath and says that he is informed that C D was at the time said contract was made and entered into and said labor was performed (or material furnished) the owner of the house (or improvements) described as follows: (Here describe the house or improvements.) And the said house (or improvements) is situated upon a certain lot or tract of land which affiant is informed is owned by said C D, and which is described as follows: (Here describe the lot or lots or the land.) And this affiant (or his principal) claims a lien upon said house (or improvements) and upon said land. (Or if the material was furnished to any railroad company, its agent or receiver, to construct or repair its railroad or other property, then the affiant shall describe said railroad by giving its charter name and the name of the receiver, if any, and the agent of said company, if any, with whom the contract was made, and that affiant or his principal claims a lien on said railroad and its property); provided, however, a substantial compliance with the above form shall be deemed sufficient to fix and secure the lien.

Art. 3298. If the labor is performed for or the material is furnished to a contractor, builder, agent or receiver, and not the owner of the property, then the following form shall be deemed sufficient to fix the lien provided for by this chapter:

The State of Texas,

County of —,

A B, affiant, makes oath and says that the annexed is a true and correct account of the labor performed for (or the material furnished to) C D, a contractor (builder, agent, or receiver) by affiant (or his principal), and the prices therefor as set forth in the annexed account are just and reasonable, and that the same is unpaid (or the sum of \$——, as shown by said account, is unpaid) after allowing all just and lawful offsets, payments and credits known to affiant; that said labor was performed (or material furnished, or both) for (or to) said C D, to be used in the erection of a house (or building or improvements, or in the repair of the house, building or improvement, or in the construction or improvement of the railroad or its property), owned, as affiant is informed and believes, by E F, of — county, Texas, and that said labor was performed (or material furnished, or both) to (or for) said C D, under and by virtue of his contract between affiant (or his principal) and said C D. (And in case of material furnished affiant shall further swear that he has given to the owner, his agent or representative or receiver, notice in writing of each item of said account as required in article 3296, as the same was furnished to said C D; provided, however, that a substantial compliance with the above form shall be deemed sufficient to fix and secure the lien.)

Form when
material is
furnished to
contractor or
builder and
not the owner
of property.
Ib. §5.
(Amend. 1895,
p. 194.)

Description of property.
Ib. §6.

Art. 3299. In case the contract is filed and recorded as provided for in article 3295, a like description of the house, building or improvement, and the lot or tract of land, shall accompany the same, as is required in the foregoing forms, except that the same is not required to be under oath.

What is sufficient diligence—what included on property in city and country.
Ib. §7.
(Amend. 1895, p. 194.)

Art. 3300. When a contract or account is filed and recorded as required by the preceding article, it shall be deemed sufficient diligence to fix and secure this lien. If this lien is against land in a city, town or village, it shall extend to or into the lot or lots upon which such house, building or improvement is situated, or upon which such labor was performed; and if the lien is against land in the country, it shall extend to and include fifty acres upon which such house, building or improvements is situated, or upon which such labor has been performed; and if the lien is against a railroad company, it shall extend to and include all of its property.

Priority of lien.
Ib. §8.
(Amend. 1895, p. 194.)

Art. 3301. The lien herein provided for shall attach to the house, building, improvements or railroad for which they were furnished, or the work was done, in preference to any prior lien or encumbrance or mortgage upon the land upon which the houses, buildings or improvements, or railroad have been put, or labor performed, and the person enforcing the same may have such house, building or improvement, or any piece of the railroad property sold separately; provided, any lien, encumbrance or mortgage on the land or improvement at the time of the inception of the lien herein provided for shall not be affected thereby, and holders of such liens need not be made parties in suits to foreclose liens herein provided for.

When improvements sold separately purchaser may remove.
Ib. §9.
(Amend. 1895, p. 194.)

Art. 3302. When the house, building, improvement, or any piece of the railroad's property are sold separately, the officers making the sale shall place the purchaser in possession thereof, and such purchaser shall have the right to remove the same within a reasonable time from the date of the purchase.

Sale must be under judgment.
Ib. §10.

Art. 3303. Every sale must be upon judgment rendered by some court of competent jurisdiction, foreclosing such lien and ordering sale of such property.

On homestead, how fixed.
Ib. §11.

Art. 3304. When material is furnished, labor performed, erections or repairs made upon a homestead, if the owner thereof is a married man, then to fix and secure the lien upon the same, it shall be necessary for the person or persons who furnished the material or performed the labor, before such material is furnished or labor is performed, to make and enter into a contract in writing, setting forth the terms thereof, which shall be signed by the owner and his wife, and privily acknowledged by her, as is required in making sale of homestead. And such contract shall be recorded in the office of the county clerk in the county where such homestead is situated, in a well-bound book to be kept for that purpose; provided, when such contract has been made and entered into by the husband and wife and the contractor or builder, and the same has been recorded, as heretofore provided, then the same shall inure to the benefit of any and all persons who shall furnish material or labor thereon for such contract or builder.

Notice of subcontractor or laborer to owner of property.
Ib. §12.

Art. 3305. Every person, except the original contractor or builder, or those claiming under article 3296, who may wish to avail himself of the benefits of this law, shall give at least ten days' notice in writing before the filing of the lien, as herein required, to the owner or owners, or agent, or either of them, that he holds a claim against such house, building or improvement, setting forth the

amount, and from whom the same is due; and thereafter said owner or owners, or agent, shall be authorized to retain in his hands the amount claimed until the same is settled or determined not to be owing.

Art. 3306. A compliance with the provisions of the preceding article shall be deemed sufficient diligence to fix the liability of the owner of such house, building or improvement for the payment of such demand, subject to the subsequent provisions of this law.

Diligence, what is sufficient. Ib. §13.

Art. 3307. [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.

Contractor to be furnished by owner with account. (Acts of 1876, p. 91, §7.)

Art. 3308. In all cases when a lien shall be filed under a provision of this chapter, by any person other than the original contractor or builder, it shall be the duty of the original contractor to defend any action brought thereupon, at his own expense, and during the pending of such action the owner may withhold from the contractor or builder the amount of money for which such lien shall be filed, and in case of judgment against the owner or his property upon the lien, he shall be entitled to deduct from any amount due by him to the contractor the amount of said judgment and costs, and if he shall have settled with the contractor or builder in full, he shall be entitled to recover back from the contractor any amount so paid by the owner for which the contractor or builder was originally the party liable. But no owner or proprietor shall in any case be required to pay, nor his property be liable for any money that he may have paid to the contractor before the fixing of the lien or before he has received written notice of the existence of the debt, and all sub-contractors, laborers and material men shall have preference over other creditors of the principal contractor or builder; provided further, a copy of each bill of lumber furnished to the contractor or builder, as the same is furnished, shall be delivered to the owner of said homestead, said bill specifying each item so furnished, how much is paid thereon, and what is due for lumber or material furnished for said contract prior thereto; provided, when the debt is paid under the contract for such building or improvements, the party for whose interest the contract was recorded shall enter a relinquishment showing a full compliance of said contract to the extent of all money due them from the original contractor or builder on account of labor done or material furnished, and the money due said original contractor or builder from the person owning or having improvements made shall not be garnisheed by other creditors to the prejudice of such sub-contractors, mechanics, laborers or material men.

Original contractor to defend suits by sub-contractors, etc. Ib. §14.

Art. 3309. When labor is performed by the day or week, then the indebtedness shall be deemed to have accrued at the end of each week during which labor is performed. When material is furnished the indebtedness shall be deemed to have accrued at the date of the last delivery of such material, unless there is an agreement to pay for such material at a specified time.

When indebtedness accrues. Ib. §15.

Art. 3310. The liens for work and labor done or material furnished, as provided in this chapter, shall be upon an equal footing,

Liens upon equal footing. Ib. §16.

without reference to date of filing the account or lien, and in all cases when a sale shall be ordered and the property sold, which may be described in any account or lien, the proceeds arising from such sale, if not sufficient to discharge all the liens against the same, without reference to the date of filing the account or lien, shall be paid pro rata on the respective liens; provided, such accounts or liens shall have been filed and suit brought as provided by this law; provided that nothing in this law shall be so construed as in any manner affecting the contract between said owner and original contractor as to the amount, manner or time of payment of said contract price.

Release to be filed by mechanics, etc., when.
Ib. §18.

Art. 3311. All parties who are authorized under this law to file a lien, and have done so, and had such lien recorded, shall, when such lien is paid or satisfied, or have received their proper lienable parts for which the owner of the building would be liable under this law, shall record a relinquishment and satisfaction of such lien.

RAILROAD LABORERS.

Railroad laborers, etc., to have lien, when.
(Acts of 1887, p. 17, §1.)

Art. 3312. All mechanics, laborers and operatives who may have performed labor, or worked with tools, teams or otherwise, in the construction, operation or repair of any railroad, locomotive, car or other equipment of a railroad, and to whom wages are due or owing for such work, or for the work of tools or teams thus employed, or for work otherwise performed, shall hereafter have a lien prior to all others upon such railroad and its equipments for the amount due him for personal services, or for the use of tools or teams.

Lien, how foreclosed.
(Acts of 1879, p. 8, §2.)

Art. 3313. In all suits for wages due by a railroad company for such labor as heretofore mentioned, upon proof being satisfactorily made that such labor had been performed, either at the instance of said company, a contractor or sub-contractor, or agent of said company, and that such wages are due, and the lien given by the preceding article is sought to be enforced, it shall be the duty of the court having jurisdiction to try the same to render judgment for the amount of wages found to be due, and to adjudge and order said railroad and equipments, or so much thereof as may be necessary, to be sold to satisfy said judgment. In all suits of this kind it shall not be necessary for the plaintiff to make other lienholders defendants thereto, but such lienholders may intervene and become parties thereto and have their respective rights adjusted and determined by the court.

Venue.
Ib. §3.

Art. 3314. Suits by mechanics, laborers and operatives, for their wages due by railroad companies, may be instituted and prosecuted in any county in this state where such labor was performed, or in which the cause of action or part thereof accrued, or in the county in which the principal office of such railroad company is situated, and in all such suits service of process may be made in the manner now required by law.

Lien ceases, when.
Ib. §4.

Art. 3315. The lien created by article 3312 shall cease to be operative in twelve months after the creation of the lien, if no steps be sooner taken to enforce it.

CHAPTER THREE.

LIENS ON DOMESTIC VESSELS.

Article	Article
Lien on vessels, when.....3316	Law not affected.....3317

Article 3316. [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 ves-
sels, when.
(Act Feb. 3,
1848.)
P. D. 4600.

Art. 3317. [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
In favor of hotels, etc.....3318	Reservation of title in chattel mortgages.....3327
Livery stable keepers.....3319	All instruments intended to operate as liens, to be recorded.....3328
Possession may be retained, when.....3320	Duty of clerk receiving it.....3329
Where no price agreed upon.....3321	Copy to be received in evidence, as what.....3330
Sales may be made for charges.....3322	County clerk to keep book, etc.....3331
Non-resident owner.....3323	Satisfaction to be entered.....3332
Balance, how disposed of.....3324	Property not to be removed.....3333
Final disposition of balance.....3325	Not to be recorded at length.....3334
Other liens, etc., not affected.....3326	

Article 3318. [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. 3319. [3183] Proprietors of livery or public stables shall have a special lien on 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, and this article shall apply to and include owners or lessees of pastures, who shall have a similar lien on all animals placed with them for pasturage.

Lien of livery
stable keep-
ers and pas-
turers.
Ib.
(Amend. 1895,
p. 96.)

Art. 3320. [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 re-
paired, when.
(Act April 7,
1874, p. 68, §1.)
P. D. 7116a.

Art. 3321. [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.
Ib. §1.

Art. 3322. [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,

When prop-
erty may be
sold for
charges.

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, 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.

Art. 3323. [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.

Balance, how disposed of.
Ib. §3.

Art. 3324. [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. 3325. [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. 3326. [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.

CHATTEL MORTGAGES.

Reservations of title, mortgages, and to be recorded.
(Acts of 1835, p. 76.)

Art. 3327. All reservations of the title to or property in chattels as security for the purchase money thereof, shall be held to be chattel mortgages, and shall, when possession is delivered to the vendee, be void as to creditors and bona fide purchasers, unless such reservations be in writing and registered as required of chattel mortgages; provided, that nothing in this law shall be construed to contravene the landlord and tenant act.

All instruments intended to operate as liens to be recorded.
(Acts of 1879, p. 134, §1.)

Art. 3328. Every chattel mortgage, deed of trust or other instrument of writing intended to operate as a mortgage of 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 against the creditors of the mortgagor or person making the same, and as against subsequent purchasers and mortgagees or lienholders in good faith, unless such instrument or a true copy thereof shall be forthwith deposited with and filed in the office of the county clerk of the county where the property shall then be situated, or if the mortgagor or person making the same be a resident of this state, then of the county of which he shall at the time be a resident.

Duty of clerk receiving.
(Sen. Jour., 1895, p. 479.)

Art. 3329. Upon the receipt of such instruments the clerk shall endorse thereon the day and hour when the same was deposited in his office for record, and shall keep the same on file in his office for the inspection of all parties interested until satisfaction thereof

shall be entered, as provided in article 3332; provided, that if a copy be presented to the clerk for filing, instead of the original instrument, he shall carefully compare such copy with the original, and the same shall not be filed unless it is a true copy thereof, and a copy can be filed only when the original has been witnessed by two subscribing witnesses or acknowledged or proven for record and certified as required in case of other instrument for the purpose of being recorded.

Art. 3330. A certified copy of any such instrument so filed as aforesaid, certified to under the hand and seal of the clerk of the county court in whose office the same shall have been filed, shall be admitted in evidence in like manner as the original might be, unless the execution of the original has been denied under oath by the party sought to be charged thereby; provided, that the party desiring to use such instrument shall file the same in the papers of the cause before announcing ready for trial, and not afterwards; and such certified copy shall in all cases be received as evidence of filing and entry thereof in chattel mortgage record according to the endorsement of the clerk thereon.

Copy of instrument evidence of what.
Ib. 480.

Art. 3331. The county clerk shall 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 or trustee and cestui que trust, date of the instrument, amount secured, when due, property mortgaged, and remarks; and the proper entry shall be made under each of such heads. Under the head of property mortgaged it will be sufficient to enter a general description of the property pledged and the particular place where located, and index shall be kept in the manner as required for other records.

County clerk to keep book.
Ib. §4.

Art. 3332. When the debt secured by any such instrument shall have been paid or satisfied, it shall be the duty of the mortgagee, his assignee, attorney or legal representative to enter or cause to be entered and attested by the clerk, as aforesaid, satisfaction thereof, in the record book in which the instrument is entered, which may be done under the head of "remarks," and any instrument acknowledging payment or satisfaction need not be recorded at length, but the entry as above provided showing the same has been paid shall be sufficient, and the original instrument or copy thereof on file shall then be delivered to the mortgagor or maker upon demand, or the clerk may mail the same to him.

Satisfaction to be entered.
(Sen. Jour., 1895, p. 480.)

Art. 3333. The person making any such instrument shall not remove the property pledged from the county, nor otherwise sell or dispose of the same without the consent of the mortgagee; and in case of any violation of the provisions of this article the mortgagee shall be entitled to the possession of the property, and to have the same then sold for the payment of his debt, whether the same has become due or not.

Property not to be removed.
Ib. §6.

Art. 3334. Chattel mortgages and other instruments intended to operate as mortgages of or liens upon personal property shall not hereafter be recorded at length as heretofore required, and when deposited and filed in accordance with the provisions of this law shall have the force and effect heretofore given to a full registration thereof, and all persons shall be thereby charged with notice thereof, and of the rights of the mortgagee, his assignee or representative thereunder, but nothing herein contained shall be so construed as to in any manner affect the rights of any person under any instrument heretofore recorded as required by law.

Not to be recorded at length.
Ib. §7.

CHAPTER FIVE.

LIEN—LIVE STOCK.

	Article		Article
Lien of keeper of stallion.....	3335	Manner of securing when contract is	
Period of such lien.....	3336	verbal	3338
Manner of fixing lien where contract is		Contract, written or sworn to, to contain	
in writing	3337	description of mother of progeny.....	3339

Keeper of stallion, etc., a lien. (Acts of 1889, p. 115.)

Article 3335. The owner or keeper of any stallion, jack, or bull, who keeps the same confined for the purpose of standing them for profit, shall have a preference lien upon the progeny of such stallion, jack or bull, to secure the payment of the amount due such owner or keeper for services of such stallion, jack or bull, and such lien may be foreclosed in the same manner as other mortgage liens upon personal property in this state; provided, that where parties misrepresent their stock by false pedigree no lien shall obtain.

To remain in force one year. Ib. §2.

Art. 3336. The lien herein provided for shall remain in force for the period of twelve months from the birth of said progeny, but shall not be enforced until six months shall have elapsed after such birth.

Lien, how secured. Ib. §3.

Art. 3337. In order to fix and secure the lien provided for, the owner or keeper shall have the right at any time within sixty days after such service by such stallion, jack or bull is rendered, to file his contract in the office of the county clerk of the county of the residence of the person benefited by such service, and cause the same to be recorded in a book kept by the clerk for that purpose, and said clerk shall be allowed a fee of twenty cents for recording such contract.

Duplicates of contract to be made. Ib. §4.

Art. 3338. If the contract or agreement be verbal a duplicate copy of the same shall be made under oath; one to be delivered to the clerk to be recorded and filed as provided for written contracts, and the other to be transmitted to the party owing the debt.

What contract shall contain. Ib. §5.

Art. 3339. The contract, written or sworn to, as provided for in the two preceding articles, shall contain a definite description by marks, brands and color of the mother of such progeny.

TITLE LXVII.

Limitations.

CHAPTER ONE.

Article	Article
Three years' possession, when a bar.....3340	Possession gives full title, when.....3347
Title and color of title defined.....3341	Peaceable possession defined.....3348
Five years' possession, when a bar.....3342	Adverse possession defined.....3349
Ten years' possession, when a bar.....3343	Possession by different persons.....3350
Preceding embraces what.....3344	Right of state not barred.....3351
Lands surrounded by other lands, peace- able possession of defined.....3345	Does not run against infants, married women, etc.....3352
Same subject3346	

Article 3340. [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. 3341. [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. 3342. [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 afterward; provided, that this article shall not apply to any one in possession of land, who in the absence of this 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 of 1879, ch. 125, p. 132.)

Art. 3343. [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. 3344. [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

Ten years' possession construed to embrace what. Ib. P. D. 4624.

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.

Land sur-
rounded by
other lands,
etc.

Peaceable
possession
defined.
(Acts of 1891,
p. 76.)

Art. 3345. A tract of land owned by one person, entirely surrounded by a tract or tracts owned, claimed or fenced by another shall not be considered inclosed by a fence inclosing the circumscribing tract or tracts, or any part thereof; nor shall the possession by the owner or claimant of such circumscribing land of such interior tract be the peaceable and adverse possession contemplated by article 3343, unless the same be segregated and separated from the circumscribing land by a fence, or unless at least one-tenth thereof be cultivated and used for agricultural purposes, or used for manufacturing purposes.

Same subject.
Ib.

Art. 3346. Possession of land belonging to another by a person owning or claiming five thousand acres or more of lands inclosed by a fence in connection therewith or adjoining thereto shall not be the peaceable and adverse possession contemplated by article 3343, unless said land so belonging to another shall be segregated and separated by a substantial fence from said lands connected therewith or thereto adjoining, or unless at least one-tenth thereof shall be cultivated and used for agricultural purposes, or used for manufacturing purposes, or unless there be actual possession thereof.

Possession
gives full title,
when.

Art. 3347. [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, the person having such peaceable and adverse possession shall be held to have full title, precluding all claims.

"Peaceable
possession"
defined.
(Acts of 1841,
p. 119, §14.)
P. D. 4621.

Art. 3348. [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. 3349. [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. 3350. [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.
P. D. 4622-
3-4.
(Acts of 1887,
p. 28.)

Art. 3351. [3200] The right of the state shall not be barred by any of the provisions of this chapter, nor shall any person ever acquire, by occupancy or adverse possession, any right or title to any part or portion of any road, street, sidewalk or grounds which belong to any town, city or county, or which have been donated or dedicated for public use to any such town, city or county by the owner thereof, or which have been laid out or dedicated in any manner to public use in any town, city or county in this state; provided, this law shall not apply to any alley laid out across any block or square in any city or town.

Does not run
against in-
fants, married
women, etc.
(Acts of 1841,
p. 109, §§14, 15,
16, 17.)
P. D. 4621-
2-3-4.
(Amend. 1895,
p. 35.)

Art. 3352. [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. Of unsound mind; or,
3. 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; provided, that limitation shall not begin to run against married women until they arrive at the age of twenty-one years; and, further, that their disability shall continue one year from and after the passage of this article, and that they shall have thereafter the same time allowed others by the provisions hereof; and, further, that this article shall in no way affect suits that are now or may be pending when the same takes effect, and all such suits shall be tried and disposed of under the law now in force.

CHAPTER TWO.

LIMITATION OF PERSONAL ACTIONS.

Article	Article
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Actions to be commenced in two years..... 3354	On motion for not returning execution..... 3362
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Article 3353. [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 courts, of the following description:

Actions to be commenced in one year.
(Acts Feb. 5, 1841, §1; Feb. 2, 1860, §1.)
P. D. 4604.
P. D. 15.

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.

Art. 3353a. Causes of action upon which suit has been or may hereafter be brought by the injured party for personal injuries other than those resulting in death, whether such injuries be to the health or to the reputation or to the person of the injured party, shall not abate by reason of his death, nor by reason of the death of the person against whom such cause of action shall have accrued; but in the case of the death of either or both, such cause of action shall survive to and in favor of the heirs and legal representatives of such injured party and against the person, receiver or corporation liable for such injuries and his legal representatives; and so surviving such cause may be thereafter prosecuted in like manner and with like legal effect as would a cause of action for injuries to personal property.

Survival of cause of action.
(Act of 1895, p. 143.)

Art. 3354. [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:

Actions to be commenced in two years.
(Acts Feb. 5, 1841, p. 163, §1; Feb. 16, 1852, p. 128, §1.)
P. D. 4604.

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.

Shall run
against each
item, when.
Id. §54, 5.
P. D. 4611-12.

Art. 3355. [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.

What actions
barred in four
years.
(Act Feb. 5,
1841, p. 163, §1.)
P. D. 4604.

Art. 3356. [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:

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 copartner for a settlement of the partnership accounts, or upon mutual and current accounts concerning the trade of merchandise between merchant and merchant, their factor 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.

On bond of
executor, ad-
ministrator
or guardian.
(Acts March
20, 1848; Aug.
9, 1876, p. 102,
§42.)
P. D. 1375,
3923.

Art. 3357. [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.

All other ac-
tions barred,
when.

Art. 3358. [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.

Actions on
foreign judg-
ments barred,
when.

Art. 3359. [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 for
specific per-
formance.

Art. 3360. [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.

Judgment
shall be re-
vived, when.
(Act Feb. 5,
1841, §2.)
P. D. 4608.

Art. 3361. [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.

Art. 3362. [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. 3363. [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. 3364. [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.)

Art. 3365. [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.

In case of forgery, etc., action accrues when.
Ib. §3.

CHAPTER THREE.

GENERAL PROVISIONS.

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Presumption of death, etc., when, etc.....	3372		
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Article 3366. [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.

Suspension during late war.
(Const., art. 16, §18.)

Art. 3367. [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.

Time of temporary absence not counted.
(Act Feb. 5, 1841, §22.)
P. D. 24.

Art. 3368. [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 owner, etc., shall stop limitation until, etc.
(Act Feb. 16, 1852, §3.)
P. D. 4607.

Art. 3369. [3218] In case of the death of any person against whom there may be a 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

Death of person, etc., against whom, etc.
Ib. §2.
P. D. 4606.

and in that case the said law of limitation shall only cease to run until such qualification.

Acknowledg-
ment must be
in writing.
(Act Feb. 5,
1841, §12.)
P. D. 4617a.

Art. 3370. [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. 3371. [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 his answer.

Presumption
of death,
when, etc.
(Act Feb. 5,
1841, §10.)
P. D. 23.

Art. 3372. [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.

Limitation
shall not run
against in-
fants, etc.

Art. 3373. [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—

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.

Action against
immigrant
barred, when.
Ib. §13.
P. D. 4618.

Art. 3374. [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.

Debts in-
curred prior
to removal of
person to this
state.
Ib. §4.
P. D. 4620.

Art. 3375. [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.

One disability
not tacked
to another.

Art. 3376. [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.

Claims barred
under pre-ex-
isting laws,
etc.

Art. 3377. [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.

Art. 3378. It shall be unlawful for any person, firm, corporation, association or combination of whatsoever kind to enter into any stipulation, contract or agreement by reason whereof, the time in which to sue thereon is limited to a shorter period than two years. And no stipulation, contract or agreement for any such shorter limitation in which to sue shall ever be valid in this state.

No agreement shortening period of limitation valid. (Acts of 1891, p. 20, §1.)

Art. 3379. No stipulation in any contract requiring notice to be given of any claim for damages as a condition precedent to the right to sue thereon shall ever be valid unless such stipulation is reasonable, and any such stipulation fixing the time within which such notice shall be given at a less period than ninety days shall be void, and when any such notice is required, the same may be given to the nearest or any other convenient local agent of the company requiring the same. In any suit brought under this and the preceding article it shall be presumed that notice has been given, unless the want of notice is specially pleaded under oath.

Notice of claims for damages; rule as to. 1b. §2.

TITLE LXVIII.

Liquor Dealers.

[For other regulations as to license, see title "Taxation."]

	Article		Article
Liquor dealers shall give bond.....	3380	License to be posted.....	3382
License, issued when.....	3381	New certificate to be issued, when.....	3383

Liquor dealers shall give bond.
(Acts of 1887, p. 58, §4.)

Article 3380. Any person, firm or association of persons desiring to engage in the sale of spirituous, vinous or malt liquors, or medicated bitters capable of producing intoxication, shall, before engaging in such occupation, be required to enter into bond in the sum of five thousand dollars, with at least two good, lawful and sufficient sureties, payable to the state of Texas, to be approved by the county judge, conditioned that said person, firm, or association of persons so selling spirituous, vinous, or malt liquors, or medicated bitters capable of producing intoxication, in quantities less than a quart, shall keep an open, quiet and orderly house or place for the sale of spirituous, vinous or malt liquors, or medicated bitters capable of producing intoxication; and that he or they will not sell or permit to be sold in his or their house or place of business, nor give, nor permit to be given, any spirituous, vinous, or malt liquors, or medicated bitters capable of producing intoxication, to any person under the age of twenty-one years, or to a student of any institution of learning, or to any habitual drunkard, or to any person after having been notified in writing through the sheriff or other peace officer, by the wife, mother, daughter, or sister of the person, not to sell to such person; and that he or they will not permit any person under the age of twenty-one years to enter and remain in such house or place of business; and that he or they will not permit any games prohibited by the laws to be played, dealt, or exhibited in or about such house or place of business; and that he or they will not keep or permit to be kept, for profit, amusement, or other purposes, in or about his or their place of business, any nine or ten-pin alley, pool table, bagatelle, pigeon-hole, or jenny-lind table, nor any other kind of table or device used for games of chance; and that he or they will not rent or let any part of the house or place in which he or they have undertaken to sell spirituous, vinous or malt liquors, or medicated bitters capable of producing intoxication, in quantities less than a quart, to any person or persons, for the purpose of running or conducting any game or games prohibited by the laws of this state; and that he or they will not adulterate in any manner by mixing any drug with any intoxicating liquor of any kind; and that he or they will not knowingly sell or give away any impure or adulterated liquor of any kind; which said bond may be sued on at the instance of any person or persons aggrieved by the violation of its provisions, and such person shall be entitled to recover the sum of five hundred dollars as liquidated damages for each infraction of the conditions of such

bond, and the said bond shall not be void on the first recovery, but may be sued on until the full penal sum named therein shall have been recovered. In addition to civil proceedings for individual injuries brought on said bond as above indicated, if any person, firm, or association of persons, shall violate any of the conditions of the bond herein required, it shall be the duty of the county and district attorneys, or either of them, to institute suit thereupon in the name of the state of Texas, for the use and benefit of the county, and the amount of five hundred dollars as a penalty shall be recovered from the principals and sureties upon a breach of any of the conditions thereof; and whenever the first or subsequent bond, as required, is exhausted by suit at the instance of individuals or for the use of the county, a new similar bond shall be given and approved before the dealer shall have the right to further pursue his occupation as a retail liquor dealer; or in case suit is pending on any such bond, and the county or district attorney shall make and file an affidavit with the clerk of the county court that he believes the bond of the defendant will be exhausted by said suit, the clerk shall at once notify the liquor dealer thereof, and it shall be the duty of the retail liquor dealer within twenty days from the time the bond is exhausted, or in other event within twenty days from the time the notice is given, to give a new bond similar to the bond first given, to be approved in the same way, and until such new bond is given and approved when it is required by this law, the retail liquor dealer shall not have the right to further pursue his occupation; and any person, firm, or association of persons who shall pursue his or their said occupation without giving the first bond or the new bond, as required by this law, shall be deemed guilty of a misdemeanor, and on conviction shall be fined the same amount provided for in cases where no license has been obtained. The provisions of this law shall not be so construed as to repeal or in any manner affect any penal laws now in force in this state concerning the unlawful sale of spirituous, vinous or malt liquors, or medicated bitters capable of producing intoxication; nor shall they be construed as depriving any person, firm, or association of persons, who are now pursuing the occupation of selling spirituous, vinous or malt liquors, or medicated bitters capable of producing intoxication, in any quantity, who have complied with the law regulating the same, from continuing the said pursuit or occupation, for the full length of time for which license was obtained, and the law otherwise complied with. An open house in the meaning of this title is one in which no screen or other device is used or placed, either inside or outside of such house or place of business, for the purpose of or that will obstruct the view through the open door or place of entrance into any such house or place where intoxicating liquors are sold in quantities less than a quart. A quiet house or place of business in the meaning of this title is one in which no music, loud or boisterous talking, yelling, or indecent or vulgar language is allowed, used, or practiced, or any other noise calculated to disturb or annoy persons residing or doing business in the vicinity of such house or place of business, or those passing along the streets or public highways. By an orderly house is meant one in which no prostitute or lewd woman or women are allowed to enter or remain; and said house must not contain any vulgar or obscene pictures.

Art. 3381. The county clerks in the several counties in this state shall issue license to any person, firm or association of persons en-

License is-
sued, when.
lb. §5.

gaged or desiring to engage in the sale of spirituous, vinous or malt liquors, or medicated bitters capable of producing intoxication, upon payment by such person, firm, or association of persons of all occupation taxes herein levied for state purposes, and such additional occupation taxes as shall be levied by commissioners' courts and by incorporated towns or cities, and also filing the bond required in article 3380. The evidence of payment of all tax upon such occupation shall be the receipt of the county collector of taxes for such amount of tax as shall have been or may be assessed and collected for state and county purposes upon such occupation, and the receipt of the city collector of taxes for the amount of such tax paid any city or town wherein such business or occupation may be carried on.

License to be posted.
Ib. §6.

Art. 3382. The license required by this chapter shall be posted in some conspicuous place in the house where the business or occupation for which such license is necessary is carried on before engaging in such occupation.

New certificate to be furnished, when.
(Acts of 1887, p. 132, §3.)

Art. 3383. If from any cause any certificate of occupation license shall be lost or destroyed, it shall be the duty of the clerk, upon application of the person, firm or corporation who formerly had such license, to furnish a new certificate for the remainder of the term covered by the license lost or destroyed.

TITLE LXIX.

Local Option.

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Order when against prohibition.....	3392		

Article 3384. [3227] The commissioners' court of each county in the state, whenever they deem it expedient, may order an election, to be held by the qualified voters of said county, or of any justice's precinct, or such subdivisions of a county as may be designated by the commissioners' court of said county, or any town or city therein, to determine whether or not the sale of intoxicating liquors shall be prohibited in such county, justices' precinct, or subdivision of such county, or in any town, or city; provided, it shall be the duty of said commissioners' court to order the election aforesaid whenever petitioned to do so by as many as two hundred and fifty voters in any county, or fifty voters in any justice's precinct, or subdivision of such county, as shall be designated by said court, or in any city or town, as the case may be; provided, that if the justice's precinct, or subdivision of such county, embrace within its limits an incorporated town or city or portions thereof, then such election shall only be ordered when the petition for the same is signed by qualified voters, not less than one-tenth in number of the total vote cast for governor at the next preceding general election in such incorporated town or city; and in case an election is asked for a subdivision of such county, the petition shall describe such subdivision by metes and bounds, and the said petition and description of said subdivision shall be recorded in full in the minutes of the commissioners' court, and such description shall be embraced in the notice given for such election; provided, no city or town shall be divided in making any such subdivision.

Commissioners' courts may order elections. (Acts of 1887, p. 96; amend. 1893, p. 48.)

Art. 3385. [3228] The preceding article shall not be so construed to prohibit the sale of wines for sacramental purposes, nor alcoholic stimulants as medicines in cases of actual sickness, but such stimulant shall only be sold upon the written prescription of a regular practicing physician, dated and signed by him, and certified, on his honor, that he, the physician, has personally examined the applicant, naming him, and that he finds him actually sick and in need of the stimulant prescribed as medicine; provided, that a physician who does not follow the profession of medicine as his principal and usual calling shall not be authorized to give the prescription provided for in this article; and provided further, that no person shall be permitted to sell more than once on the same prescription, nor shall any person be permitted to sell at all on the prescription of a physi-

What not prohibited. 1b. §5. (Amend. 1893, p. 48.)

cian not herein authorized to give it, nor on a prescription which is not dated, signed, and certified as above required; provided, that every person selling such stimulants upon the prescription herein provided for, shall cancel such prescription by endorsing thereon the word "cancelled," and file the same away.

Where voting to take place.
 Ib.
 (Amend. 1893, p. 48.)

Art. 3386. [3229] When the commissioners' court, of their own motion, or upon the petition provided for in article 3384, shall order the election as herein provided for, it shall be the duty of said court to order such election to be held at the regular voting place or places within the proposed limits, upon a day not less than fifteen nor more than thirty days from the date of said order, and the order thus made shall express the object of such election, and shall be held to be prima facie evidence that all the provisions necessary to give it validity, or to clothe the court with jurisdiction to make it, have been fully complied with; provided, that if there is no regular voting place within the proposed limits of a subdivision less than a justice's or voting precinct, then the commissioners' court shall designate some suitable place within said subdivision, where said election shall be held, and said place shall be named in the notices of election, and said court will appoint such officers to hold such election as are now required to hold general elections.

Notice.
 Ib.
 (Amend. 1893, p. 48.)

Art. 3387. [3230] The clerk of said court shall post, or cause to be posted, at least five copies of said order at different places within the proposed limits, for at least twelve days prior to the day of election, which election shall be held and the returns thereof made in conformity with the provisions of the general laws of the state, and by the officers of election appointed and qualified under such laws.

Form of ballot.
 (Acts of 1893, p. 48.)

Art. 3388. [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. 3389. [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 votes, and within ten days thereafter make due report of said election to the aforesaid court.

To hold session for counting votes, when.
 (Acts of 1887, p. 96; amend. 1893, p. 48.)

Art. 3390. [3233] Said court shall hold a special session on the eleventh day after the holding of said 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 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 limits, except for the purposes and under the regulations specified in this title, until such time as the qualified voters therein may at a legal election held for that purpose by a majority vote decide otherwise; and the order thus made shall be held to be prima facie evidence that all the provisions of law have been complied with in giving notice of and holding said election, and in counting and returning the votes and declaring the result thereof.

Result to be declared.
 Ib.
 (Amend. 1893, p. 48.)

Art. 3391. [3234] The order of court declaring the result and prohibiting the sale of such liquors shall be published for four successive weeks in some newspaper published in the county wherein such election has been held, which newspaper shall be selected by

the county judge for that purpose. If there be no newspaper published in the county, then the county judge shall cause publication to be made by posting copies of said order at three public places within the prescribed limits for the aforesaid length of time. The fact of publication in either mode shall be entered by the county judge on the minutes of the commissioners' court. And entry thus made, or a copy thereof certified under the hand and seal of the clerk of the county court shall be held sufficient prima facie evidence of such fact of publication.

Art. 3392. [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 prohibition. (Acts of 1893, p. 48.)

Art. 3393. [3236] No election under the preceding articles shall be held within the same prescribed limits in less than two years after an election under this title has been held therein; but at the expiration of that time the commissioners' court of each county in the state, whenever they decree it expedient, may order another election to be held by the qualified voters of said county, or of any justice's precinct, or such subdivision of a county as may be designated by the commissioners' court of such county, for the same purpose; provided, it shall be the duty of such court to order the election aforesaid whenever petitioned to do so by as many as two hundred voters in any county, or fifty voters in any justice's precinct or subdivision of such county, as the case may be, to order an election for the same purpose, which election shall be ordered held, notice thereof given, the votes returned and counted, and the result declared and published, in all respects as provided by this title for a first election; and the order granting such other elections, as well as that declaring the result, shall, if prohibition be carried, have the same force and effect and the same conclusiveness as are given to them in the case of a first election by the provisions of this title.

Second election, when.

Art. 3394. [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 where the election resulted in prohibition.

Order, etc., on second election. (Acts of 1887, p. 96; amend. 1893, p. 48.)
Ib.

Art. 3395. [3238] The failure to carry prohibition in a county shall not prevent an election for the same from being immediately thereafter held in a justice's precinct or subdivision of such county as designated by the commissioners' court, or of any town or city in such county; nor shall the failure to carry prohibition in a town or city prevent an election from being immediately thereafter held for the entire justice's precinct or county in which said town or city is situated; nor shall the holding of an election in a justice's precinct in any way prevent the holding of an election immediately thereafter for the entire county in which the justice's precinct is situated; but when prohibition has been carried at an election ordered for the entire county, no election on the question of prohibition shall be thereafter ordered in any justice's precinct, town or city of said county until after prohibition has been defeated at a subsequent election for the same purpose, ordered and held for the entire county, in accordance with the provisions of this title; nor in any case where prohibition has carried in any justice's precinct shall an election on the question of prohibition be ordered thereafter in any town or city of such precinct until after prohibition has been defeated at a subsequent election ordered and held for such entire precinct.

May hold second election in subdivision. (Amend. 1893, p. 48.)

Penalty.
(Acts of 1883,
p. 48.)
P. C. 378.

Art. 3396. [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.

Election, how
contested.
(Acts of 1887,
p. 96; amend.
1893, p. 48.)

Art. 3397. [3239a] At any time within thirty days after the result of the election has been declared, any qualified voter of the county, justice's precinct or subdivision of such county, or in any town or city of such county in which such election has been held, may contest the said election in any court of competent jurisdiction, in such manner as has been or may hereafter be prescribed; and 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 was intrusted 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 appears 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 to be void, and shall order the proper officer to order another election to be held, 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.

Refunding of
license tax.
(Acts of 1883,
p. 110; amend.
1893, p. 48.)

Art. 3398. In all cases where any person, firm or association of persons pursuing the occupation of liquor dealers under license issued in accordance with the laws of this state has been or shall hereafter be prevented from pursuing such occupation for the full time to which he would be otherwise entitled by reason of the adoption of local option in any county, precinct, subdivision of such county, town or city, a proportionate amount of the taxes paid by him for the unexpired term shall be refunded to him.

District
judges to give
in charge to
grand juries.
(Acts of 1879,
p. 41; amend.
1893, p. 48.)

Art. 3399. It is hereby made the duty of the district judges to give this law in charge to the grand juries; and it is made the special duty of the county attorneys to file or have filed a complaint in the county court of said county against all houses, and the keepers thereof, used for the sale, exchange or gift of any kind of intoxicating liquors, in any county, justice's precinct or subdivision of such county, or of any town or city in such county in this state when local devices are resorted to, to prevent or avoid detection of the keeper thereof, and upon said complaint being filed with any justice of the peace, describing the place where the device is kept, and the name of the person violating this law, if known, said justice of the peace shall issue his warrant commanding any sheriff or constable to search said place, and, if the law is being violated, to arrest the person or persons so violating the law; and it shall be the duty of the sheriff of the county wherein such house or place where such device is kept, for the sale or gift of intoxicating liquors, to demand admission into the same, and upon admittance being refused, the sheriff is hereby authorized and required by law to force open the same and arrest and hold for trial before the courts all such per-

sons who shall violate any of the provisions of this title; and it is the duty of the county judges and justices of the peace, having jurisdiction in the premises, to see that this law is rigidly enforced; provided, no arrest or search shall ever be made until the sheriff shall first procure a warrant therefor, issued by the proper authority.

TITLE LXX.

Militia.

CHAPTER ONE.

GENERAL PROVISIONS.

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Who are sub-
ject to mili-
tary duty.
(Const., art.
6, §46; U. S.
Const., art. 1,
§§8, 17.)

Persons ex-
empt.
(U. S. Rev.
Stat. §1629;
Act July 22,
1876, p. 55.)

Article 3400. [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. 3401. [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. 3402. [3242] The militia shall be divided into two classes, to be known and designated as—

1. The reserve militia.
2. The volunteer guards.

Art. 3403. [3243] The reserve militia shall consist of all persons liable to military duty, who have not attached themselves by enlistment to the volunteer guards. Reserve militia.

Art. 3404. [3244] The volunteer guards shall consist of such persons as by voluntary enlistment have organized themselves into uniform companies, and have been accepted as such by the commander-in-chief in accordance with the provisions of this title. Volunteer guards.

CHAPTER TWO.

THE COMMANDER-IN-CHIEF AND HIS STAFF.

Article	Article
1. The commander-in-chief. Governor, commander-in-chief.....3405 May call out militia, when.....3406 May establish regulations for, etc.....3407 General authority over militia.....3408	3. The adjutant-general. Adjutant-general, duties, etc.....3410 His term of office.....3411 Oath and bond.....3412 His seal of office.....3413 Ex officio duties.....3414 His general duties.....3415 Annual report to governor.....3416 To be printed.....3417 Special reports.....3418
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I. THE COMMANDER-IN-CHIEF—HIS POWERS, ETC.

Article 3405. [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. 3406. [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. 1b.

Art. 3407. [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. 3408. [3248] He may at any time, for good and sufficient cause, disband, reorganize 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. 3409. The staff of the commander-in-chief shall consist of the adjutant-general, the judge-advocate-general, the senior assistant inspector-general, and senior assistant quartermaster-general, and six aides-de-camp, each with the rank of lieutenant-colonel, to be appointed by him. Staff. (Acts of 1889, p. 12.)

III. ADJUTANT-GENERAL AND HIS DUTIES, CORPS AND RANK.

Art. 3410. [3249] 1. The adjutant-general shall have the rank of brigadier-general; and in the corps of adjutant-general there shall be to each division one assistant adjutant-general with the rank of lieutenant-colonel, and to each brigade one assistant adjutant-general with rank of major. 1b. §1.

2. In the inspector-general's department there shall be one assistant inspector-general with rank of colonel, and to each division 1b. §2.

one assistant inspector-general with rank of lieutenant-colonel, and to each brigade one assistant inspector-general with rank of major.

Ib. §3. 3. In the quartermaster's corps there shall be an assistant quartermaster-general with rank of colonel, and to each division a quartermaster with rank of major, and to each brigade a quartermaster with rank of captain.

Ib. §4. 4. The bureau of military justice shall consist of one judge-advocate-general with rank of colonel, and one assistant judge-advocate-general with rank of major to each division.

Ib. §5. 5. The state health officer shall be ex officio surgeon-general, and shall have the rank of colonel. In the medical corps there shall be to each division a medical director with the rank of lieutenant-colonel, and to each brigade a surgeon with the rank of major.

Ib. §6. 6. The adjutant-general shall be appointed by the commander-in-chief, by and with the advice and consent of the senate, if in session, and all other staff officers of the general staff shall be appointed by the commander-in-chief, and shall constitute a permanent staff department as in the United States army; provided, that all staff officers now holding commissions shall hold their present rank until the commander-in-chief shall otherwise direct.

His term of office. Art. 3411. [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 oath and bond. Art. 3412. [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 seal of office. (Act May 13, 1846, p. 346.) Hart. D. 3. Art. 3413. [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 ex officio duties. Art. 3414. [3253] The adjutant-general shall be ex officio chief of staff, quartermaster-general, commissary-general, inspector-general, paymaster-general and chief of ordnance.

His general duties. (U. S. Rev. Stat. §1636.) Art. 3415. [3254] It shall be his duty—

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.

Art. 3416. [3255] He shall report annually to the commander-in-chief—

Annual report to the governor.

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.

Art. 3417. [3256] The annual report provided for in the preceding article shall be printed and laid before the legislature for its information.

Annual report to be printed.

Art. 3418. [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.

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CHAPTER THREE.

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Article 3419. [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.

How consti-
tuted.
(Acts of 1839,
p. 12.)

Art. 3420. [3293] Volunteer guards shall be constituted by voluntary enlistment for a period not less than three years on the part of persons held to military duty under the laws of the state, or of persons that may be exempt under such laws.

I. COMPANY ORGANIZATION.

Company,
what consti-
tutes.
Ib.

Art. 3421. [3294] Any number of persons not less than forty nor more than one hundred, of good moral character, desiring to form a company of volunteer guards, may meet and declare such purpose, and after obtaining consent from the governor may perfect their organization by electing their company officers in accordance with the provisions of this chapter. And it shall not be lawful for any body of men whatsoever, other than the regularly organized volunteer guard, to associate themselves together as a military company or organization, or to parade in public with arms in any part of the state, without the license of the governor therefor.

Officers to be
elected.
Ib.

Art. 3422. [3295] Each company of volunteer guards shall elect one captain, one first lieutenant and one second lieutenant, and each troop or battery such officers as the regulations shall specify or the commander-in-chief shall direct; and the commanding officer shall appoint five sergeants and four corporals, and the commanding officer of each troop or battery shall appoint such numbers of sergeants and corporals as may be specified in the regulations or the commander-in-chief may direct.

Captains may
appoint cer-
tain subordi-
nates.

Art. 3423. [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.

Oath of offi-
cers and pri-
vates.

Art. 3424. [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 constitution 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. 3425. [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 com-
pany a cor-
poration.
(Act Feb. 15,
1858.
O. & W. 1461.

Art. 3426. [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 there-

of, 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.

Art. 3427. [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:

Certificate of
the adjutant-
general.

“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.”

Art. 3428. [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.

Such certi-
cate evi-
dence.

Art. 3429. [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. Companies heretofore organized and availing themselves of this privilege shall thereafter constitute a part of the volunteer guards.

Companies
heretofore
organized.

Art. 3430. [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 com-
panies may be
organized.

II. REGIMENTAL AND OTHER ORGANIZATIONS.

Shall be organized into brigades, etc. (Acts of 1889, p. 13.)

Art. 3431. [3304] The Texas volunteer guard in time of peace shall consist of one major-general, two brigadier-generals, an adjutant-general's department, an inspector-general's department, a quartermaster's department, a subsistence department, an ordnance department, a medical department, a pay department, a bureau of military justice, and such organizations of artillery, cavalry and infantry as the commander-in-chief may direct, not to exceed three thousand men, rank and file, including all departments of the volunteer guard, and which shall be organized into battalions, regiments, brigades and divisions of suitable size, and changed from time to time as the commander-in-chief may deem for the best interests of the service.

Each organization shall be numbered.

Art. 3432. [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.

Regimental organization. (Acts of 1889, p. 13.)

Art. 3433. [3306] Each regiment shall consist of not more than ten companies and a regimental band, and shall have a colonel, a 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 an adjutant and a quartermaster with the rank of first lieutenant, and an assistant surgeon and a chaplain with the rank of captain of infantry. He shall appoint a sergeant-major, quartermaster and commissary sergeant, a hospital steward and a drum-major.

Brigade organization. Ib.

Art. 3434. [3307] Each brigade shall consist of not more than five regiments and shall be under the command of a brigadier-general, to be appointed by the commander-in-chief, and each division shall consist of not more than three brigades and shall be under the command of a major-general, to be appointed by the commander-in-chief.

Staff organization. Ib.

Art. 3435. [3308] Each major-general shall have four aides-de-camp with the rank of captain, to be appointed by him; and each brigadier-general shall have two aides-de-camp with the rank of captain, to be appointed by him. In addition thereto each major-general and each brigadier-general may appoint a quartermaster and commissary sergeant, a hospital steward and a clerk.

III. RANK AND COMMISSION OF OFFICERS.

Rank, how determined.

Art. 3436. [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.

All officers to be commissioned. (Const., art. 4, §20.)

Art. 3437. [3310] The commander-in-chief shall commission all officers, and each person so commissioned shall take and subscribe the oath prescribed in article 3424 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.

IV. UNIFORMS, DRILLS, PARADES AND ENCAMPMENTS.

Each soldier to procure a uniform.

Art. 3438. [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.

Art. 3439. [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.

Each company may have its own uniform.

Art. 3440. [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.

Company parades and drills.

Art. 3441. [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.

Regimental and other drills.

Art. 3442. [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 designated shall report.

Annual encampment.

Art. 3443. [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.

Governor to review troops at encampment.

Art. 3444. [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 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.

Powers of encampment commander.

V. PENALTIES AND THEIR ENFORCEMENT.

Art. 3445. [3318] It shall be the duty of the adjutant-general and the judge-advocate-general to prepare and submit to the commander-in-chief for his approval a code of regulations, not inconsistent with law, for the government and regulation of the volunteer guard as will increase its discipline and efficiency, which shall provide for the examination of certain military officers; shall define and regulate the punishment for military offenses; and shall provide for the regulation of courts-martial and courts of inquiry; which code upon its approval shall form part of this law and be distributed to the various organizations, and shall take the place of and annul all company, troop and battery constitutions and by-laws, except as may be allowed by the code.

Code of regulations. Penalties. (Acts of 1839, p. 13.)

VI. COURTS-MARTIAL.

Art. 3446. [3327] For breaches of discipline, misconduct or any other military offenses not herein provided for, non-commissioned

Courts-martial. Ib. p. 14.

officers, musicians and privates may be tried by courts-martial convened by the battalion or regimental commander, and may be punished by suspension, dismissal or dishonorable discharge from the service; such courts to consist of not less than three nor more than five commissioned officers, their findings to be subject to the approval of the officer ordering the court, and their proceedings governed by the United States army regulations relating to courts-martial.

Commissioned officers, how tried.

Art. 3447. [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 penalty. (Acts of 1839, p. 14.)

Art. 3448. [3329] The sentences of such courts shall not extend beyond suspension for a definite period, not to exceed twelve months, or 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. 3449. [3330] When an invasion of or an 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. 3450. [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. 3451. [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. 3452. [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. 3453. [3334] The officer to whom the order of the commander-in-chief of 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. 3454. [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. 3455. [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. 3456. [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. 3457. [3338] There shall be paid to such officers, non-commissioned officers, musicians and privates, for any service under articles 3450, 3454 and 3455, 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.

No pay, except when in service.

Art. 3458. [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.

Privileges and exemptions. (Const., art. 7, §3.)

Art. 3459. [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:

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.

Exemption from poll tax regulated.

Art. 3460. [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 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. 3461. [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. 3462. [3343] The commanding officer of any company of volunteer guards may likewise prepare and file a list similar to that prescribed in article 3461, 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. 3463. [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. 3464. [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. 3465. [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.

Art. 3466. [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.

Annual and special reports.

CHAPTER FOUR.

ARMS, AMMUNITION, EQUIPMENTS AND MILITARY STORES.

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Arms to be stored at, where..... 3468	Sheriffs to be keepers of arms..... 3475
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Arms may be issued to military schools. 3472	Property condemned shall be sold..... 3479
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Article 3467. [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.

Governor to draw arms from United States. (Acts Jan. 19, 1858, p. 52; J. R. Aug. 21, 1876, p. 318.) P. D. 90.

Art. 3468. [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. 3469. [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. 3470. [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.

Additional arms may be issued, when.

Art. 3471. [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.

Arms may be issued to military schools, etc.
P. D. 96.

Art. 3472. [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.

Certified copies of bonds to be evidence.

Art. 3473. [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.

Adjutant-general to collect stray arms.
(Act Nov. 12, 1866, p. 188.)

Art. 3474. [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.

Sheriffs to be keepers of arms.

Art. 3475. [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 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. 3476. [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. 3477. [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 survey.
(Act May 4, 1874, 220.)
P. D. 5327a.

Art. 3478. [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.

Art. 3479. [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 of the time and place of sale in such manner as the commander-in-chief may direct.

Property condemned shall be sold.
 Ib.
 P. D. 5827b.

Art. 3480. [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.

Report of sales, etc.
 Ib.
 P. D. 5827c.

TITLE LXXI.

Mines and Mining.

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School lands reserved, except, etc. (Acts of 1889, p. 116, §1.)

Article 3481. All the public school, university, asylum and public lands containing valuable mineral deposits are hereby reserved from sale or other disposition, except as herein provided, and are declared free and open to exploration and purchase under regulations prescribed by law by citizens of the United States and those who have declared their intention of becoming such.

To be classified. Ib. §2.

Art. 3482. It shall be the duty of the commissioner of the general land office to have a map made showing the location of all public school, university, asylum and public lands which are unsold; and it shall be the duty of the geological and mineralogical survey to examine all such lands as soon as practicable, and to designate such tracts as are apparently mineral bearing as mineral lands for the purposes of this title. If mineral lands are afterward claimed to exist at other locations than are so designated, they shall also be examined and classified accordingly.

Mining districts. Ib. §3.

Art. 3483. It shall be the duty of the commissioner of the general land office to unite a suitable number of these mineral locations into mining districts, in each of which shall be a surveyor who must either be the surveyor of the district or county or a regularly appointed deputy, and an officer qualified to administer oaths.

Extent of claims. Ib. §4.

Art. 3484. A mining claim upon veins or lodes of quartz or other rocks in places bearing silver, cinnabar, lead, tin, copper or other valuable metals, excluding deposits of iron ore, coal, kaolin, baryta, salt, marble, fire clays, valuable building stones, oil or natural gas, may equal but shall not exceed one thousand five hundred feet along the vein or lode. No such claim shall exceed twenty-one acres in total area. The end lines of each claim shall be parallel to each other, and all claims shall be in the form of a parallelogram or square unless such form is prevented by adjoining rights or boundaries of the

section in which the claim lies. The locator under this title shall be entitled to the use of all the superficial area between the inclosing lines of the claim, and to all minerals thereon, and between the side and end lines extending downward vertically until the rights secured by posting are forfeited as provided, and in all conflicts priority of location shall decide.

Art. 3485. The locators of any mining claim shall post up at the center of one of the end lines of the same a written notice, stating the name of the locator and of the claim, and the date of posting, and describe the claim by giving the number of feet in length and width, and the direction the claim lies in length from the notice, together with the section, if known, and the county; and shall place stone monuments at the four corners, and otherwise describe corners so that they can be readily found. The notice shall be placed in a conspicuous place so as to be readily seen.

Notice to be posted by locator.
Ib. §5.

Art. 3486. The locators shall, within three months after the date of posting the required notice, sink a shaft at least ten feet in depth by four feet square, or a tunnel of the same dimensions ten feet in length, or an open cross cut twenty feet in length, four feet or more wide, and ten feet in depth at its shallowest part, and shall within said time file with the county surveyor or the district surveyor of the county, as the case may be, an application in writing for the survey of their claim, which application shall be accompanied with a fee of twenty dollars, unless its tender is waived, and also with an affidavit attached thereto that the required work, signifying it, has been done, and that the locators have found valuable mineral on the claim; and the affidavit shall state the date of the first posting of the notice on the claim by the applicants; and further, that the notice has not been post-dated or changed in its date. Upon receiving said application and fee the surveyor shall record the application, together with the affidavit, and he shall thereupon forthwith proceed to survey said claim and forward the field-notes to the commissioner of the general land office within thirty days after filing the application, in default of which he shall pay the aggrieved party such damages as he may sustain, and it shall be the duty of the applicants to see that the field-notes are so returned. The fee of twenty dollars shall cover all the services provided for in this article. In all other cases enumerated in this article the fee shall be the same allowed county clerks for similar services.

Preliminaries to application.
Ib. §6.

Art. 3487. Annually after the filing of the application for a survey as hereinbefore provided, the claimant shall, until after application is made for a patent as hereinbefore provided, do one hundred dollars worth of work in developing each claim; but where claims adjoin, the amount of work may be done on one for all belonging to the same party. The value of such shall be estimated at what it could be contracted for at a fair cash price, but the cost of tools and implements and the expense of going to and returning from the mine shall not be included in said estimate. And shall in addition to this amount of work, annually pay to the treasurer of the state the sum of fifty dollars on each and every claim filed upon, which amount shall be credited to the fund to which the land belongs upon which the claim is located; provided, that all amounts so paid shall be a credit upon the final payment for such land provided for in article 3489 of this title. Within one month after the expiration of each year, the owner shall make and file with the surveyor his affidavit, setting forth specifically what the work consists of in

How payments to the state to be regulated.
Ib. §7.

detail and the value thereof, and shall also file with the surveyor at the same time the receipt of the state treasurer for the amount of cash payment provided for herein or a certified copy thereof. Upon the failure of any one of several co-owners to contribute his proportion of the expenditures required in this title within the necessary time, the co-owners who have performed the labor or made the improvements, or paid the fees or other expenditures required in this title, may, at the expiration of the year in which the same is to be done, give notice in writing or notice by publication in a newspaper published in the county where the mining is, if any; if none in such county, then in the newspaper published nearest to the mine, for at least once a week for ninety days. If after such personal notice in writing or by publication such delinquent should fail or refuse to contribute his proportion of the expenditure required by this title, his interest in the claim shall become the property of his co-workers who have made the required expenditures. An affidavit by the co-owners forfeiting the interest of such delinquent shall, when recorded in the office of the proper surveyor, be sufficient evidence of such delinquency.

Ownership of
lodes in case
of tunnel, etc.
Ib. §8.

Art. 3488. When a tunnel is run for the development of a vein or lode, or for the discovery of mines, the owner of such tunnel shall have the right of possession of all veins or lodes within two thousand feet from the face of such claim, on the line thereof, not previously known to exist, discovered in such tunnel, to the same extent as if discovered from the surface; and locations on the line of such tunnel of veins or lodes not appearing on the surface, made by other parties after the commencement of the tunnel and while the same is being prosecuted with reasonable diligence, shall be invalid, but failure to prosecute the work in the tunnel for six months shall be considered as an abandonment of the right of all undiscovered veins on the line of said tunnel.

Patents.
Ib. §9.

Art. 3489. Whenever the owners of any mining claim shall desire a patent, they shall, within five years after the filing of the application for survey, file their application for a patent upon their claim with the commissioner of the general land office, accompanied with the receipt of the state treasurer, showing that twenty-five dollars per acre has been paid by the applicant for patent to the state treasurer. No patent shall be issued in any case until the expiration of sixty days from the filing of the application. Upon filing said application the applicant shall cause to be published for four successive weeks, one insertion each week, in some newspaper published in the county in which the mine is situated, if there be any, if not, then in some newspaper published in the nearest county to the mine in which a newspaper is published, a notice stating the fact that application has been filed for patent on the claim (or claims), describing them clearly. A copy of the printed notice with affidavit that it has been published as required by this article, and that all the requirements of this title have been complied with, shall be filed with the commissioner of the general land office before patent shall issue. After the expiration of thirty days after the last insertion of said notice patent shall issue unless protest has been filed.

Patents not
included in
article 3495.
Ib. §10.
(Amend. 1893,
p. 100.)

Art. 3490. Any person shall have the right to purchase and obtain patent, by compliance with this article, on any public school, university, asylum, and public lands, containing valuable deposits of kaolin, baryta, salt, marble, fire-clay, iron ore, coal, oil, natural gas, gypsum, nitrates, mineral paints, asbestos, marls, natural ce-

ment, clay, onyx, mica, precious stones, and stone valuable for ornamental purposes, or other valuable building material, in legal subdivisions in quantity not exceeding one section; provided, that where any such parties shall have heretofore expended, or shall hereafter expend, five thousand dollars in developing the aforesaid mineral resources of any of said lands, such parties shall have the right to buy one additional section and no more, and to include in the purchase any section, or part thereof, on which the work may have been done. The lands so purchased may be in different sections, and all embraced in one or more obligations, not to exceed the quantity stated. The purchaser shall pay not less than fifteen dollars per acre where the lands shall be situated ten miles or less of any railroad in operation, and not less than ten dollars per acre where the land is over ten miles from such railroad; one-tenth of the purchase money to be paid in cash to the state treasurer, and the purchaser shall file the treasurer's receipt with the commissioner of the general land office, together with an obligation to pay the state of Texas the remainder in nine equal annual installments, with interest at six per cent per annum from date, subject to a forfeiture as in other cases. And all said lands are reserved from sale or other disposition than under this title; and where application is made to buy any of the lands herein named, except under this title, the purchaser shall swear that there are none of the minerals named in this title on said lands, so far as he knows or has reason to believe, or does believe; provided, further, that any party hereinbefore named who shall, prior to the passage of this article, have been the first to work on said lands for the development of said mineral resources, and who has abandoned said work, and is qualified at passage of this article to buy, shall have a prior preference right of doing so for thirty days after this article goes into effect; provided, further, this article shall not authorize the sale of lands containing valuable deposits of gold, silver, lead, cinnabar, copper, or other valuable metal.

Art. 3491. Any person desiring to contest the issuance of a patent may do so by filing with the commissioner of the general land office a protest setting forth the grounds of objection generally, and that protestant has an interest in the subject matter, which protest shall also state that the same is presented in good faith and not to injure or delay the applicants, or any of them, and the same shall be verified by affidavit; whereupon it shall be the duty of the commissioner to withhold patent until the controversy is ended; provided, that if the protestant shall not, within thirty days after the filing of his protest, institute suit in the court having jurisdiction thereof in the county where the claims are located, his protest shall constitute no further barrier to the issuance of a patent. A certified copy of the petition or a certificate of the clerk of the court where suit is pending shall be sufficient evidence to the commissioner of the pendency of the suit and of the date of filing said suit. When the land in controversy lies partly in two counties, suit may be brought in either. More than one claim shall not be embraced in the same patent or application. The suits here provided for shall be entitled to precedence of trial on the docket.

Art. 3492. When a location has been made and land disposed of by the state since the passage of an act for disposition of minerals on the land embraced in article 3481 of this title, if such location was made subsequent to the disposition by the state of such lands, and the locator or his assignees have not abandoned said claim, but

Contesting
issuance of
patents.
Ib. §11.

Location on
land disposed
of since
April 14, 1883.
Ib. §12.

are working it in good faith, the locator and his assignees shall nevertheless be entitled to the mineral and to the use of the superficial area as in other cases; and if the case is such that the fee in the land can not pass by patent, a patent may issue to all the minerals in the claims, and shall be a license from the state to enter upon and work said claim and extract the mineral therefrom. In cases provided for in this article when the fee does not pass, the price shall be twenty dollars per acre, and the locator or his assignee shall in addition, pay to the owner of the land in fee the fair value of the land so taken up by his claim, and roads and fences necessary to give him ingress and egress thereto, and be liable for any damages which may result to owner of the land in fee. All other provisions of this title shall apply to said location.

[Note—The act referred to is the act of 1883, page 4.]

Forfeiture of
claims, etc.
Ib. §13.

Art. 3493. All claims upon which patent has not been applied for within five years next after the application for survey, or which have not been surveyed and the field-notes returned to the general land office within the time prescribed therefor as hereinbefore provided, or upon which the assessment work has not been done, an affidavit therefor, filed as provided by this title, shall be and are declared forfeited without judicial action of any kind and subject to location as originally, but not by any one interested in the claim at the time of forfeiture; and any location for or on behalf of any such party shall be wholly void. Whenever any such claim shall be relocated, the locators and each of them shall make affidavit that the location is made without any contract or agreement of any kind that any of the parties owning an interest in the location before relocation has or is to have any interest in the same. In all other cases where affidavit is required by this title it may be made by one or more of the parties cognizant of the facts.

Relocation
of forfeited
claims.
Ib. §14.

Art. 3494. No claim which has been forfeited for any cause shall be subject to relocation for a period of thirty days next thereafter; and the party owning the same may apply to the land commissioner within that time for relief, and if it appear to him from the proof submitted that the forfeiture was not occasioned by the negligence of the owner, but by circumstances which he could not reasonably control, the commissioner may, within that time, in his discretion, grant relief against the forfeiture, and if he grants such relief he shall at once forward his order to that effect to the surveyor, who shall file the same for record in his office.

Reservation
of mineral
in sale of
lands.
Ib. §15.

Art. 3495. Whenever any application shall be made to buy or obtain title to any of the lands embraced in article 3481 of this title, except where the application is made under this title, the applicant shall make oath that there is not, to the best of his knowledge and belief, any of the mineral embraced in this title thereon, and when the commissioner has any doubt in relation to the matter he shall forbear action until he is satisfied. And any sale or disposition of said lands shall be understood to be with a reservation of the mineral thereon to be subject to location as herein provided.

Placer
mining.
Ib. §16.

Art. 3496. Claims usually called placers, including all forms of metallic deposits, excepting veins of quartz or rock in place, shall be subject to entry and patent under like circumstances and conditions, and upon similar proceedings as are provided for vein or lode claims. All placer claims located shall conform as near as practicable with existing surveys and their subdivisions, and no such lo-

cation shall include more than forty acres for each individual claimant, and shall not exceed three hundred and twenty acres for any association of persons. The price which shall be paid for such placer shall not be less than ten dollars per acre, together with all costs of proceedings as before provided.

Art. 3497. When non-mineral land, not contiguous to the vein or lode, is used by the prospector of such vein or lode for mining or milling purposes, such non-adjacent surface ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location of such non-adjacent lands shall exceed ten acres, and payment for the same must be made at the same rate as fixed by this title for the superficies of the lode. The owner of a quartz mill or reduction works, not owning a mine in connection therewith, may also receive a patent for a mill site as provided in this article.

What may be included in patent.
Ib. §17.

Art. 3498. Any owner or worker of mining claim under this title is authorized to fell and remove for building and mining purposes any timber or any trees growing or being upon unoccupied lands as described in article 3481, said lands being mineral and subject to entry only as mineral lands, under such rules and regulations as may be prescribed for the protection of timber and undergrowth upon such lands and for other purposes.

Taking timber on mining lands.
Ib. §18.

Art. 3498a. All public school, university, asylum and public lands specially included under the operation of this title, all the lands now owned by the state situated within the reservation known as the "Pacific Reservation," which were taken off the market and reserved from sale by an act approved January 22, 1883, containing valuable mineral deposits, are hereby reserved from sale or other disposition, except as herein provided, and are declared free and open to exploration and purchase under regulations prescribed by law, by citizens of the United States and those who have declared their intention of becoming such; provided, that all who have located and recorded valid claims under previous valid laws and have not abandoned same, but are engaged in developing same, shall have a prior preference right for ninety days after the passage of this title in which to relocate same under this title.

Reserved lands opened to exploration and purchase, etc. (Act 1895, p. 197.)

Art. 3498b. It shall be the duty of the commissioner of the general land office immediately upon the passage of this title to have a map made showing the location of all public school, university, asylum and public lands which are unsold at that date, and it shall be the duty of the geological and mineralogical survey to examine all such lands as soon as practicable thereafter, and to designate such tracts as are apparently mineral bearing as mineral lands for the purposes of this title. If mineral lands are afterwards claimed to exist at other locations than are so designated they shall also be examined and classified accordingly.

Commissioner to map lands.
Ib.

Art. 3498c. It shall be the duty of the commissioner of the general land office to unite a suitable number of these mineral locations into mining districts, in each of which shall be a surveyor, who must either be the surveyor of the district or county or a regular appointed deputy and an officer qualified to administer oaths.

Mining districts created.
Ib.

Art. 3498d. A mining claim upon veins or lodes of quartz or other rocks in place bearing silver, gold, cinnabar, lead, tin, copper and other valuable metals, excluding deposits of kaolin, baryta, salt, mar-

Mining claims limited, etc.
Ib.

ble, fire clay, iron ore, coal, oil, natural gas, gypsum, nitrates, mineral paints, asbestos, marls, natural cement, clay, onyx, mica, precious stones or any other non-metallic mineral, and stone valuable for ornamental or building purposes or other valuable building material, may equal but shall not exceed one thousand five hundred feet along the mine or vein or lode. No such claim shall exceed twenty-one acres in total area. The end lines of each claim shall be parallel to each other, and all claims shall be in the form of a parallelogram or square, unless such form is prevented by adjoining rights or boundaries of the section in which the claim lies. The locator under this title shall be entitled to the use of all the superficial area between the enclosing lines of the claim, and to all minerals thereon and between the side and end lines, extending downwards vertically, until the rights secured by posting are forfeited as provided; and in all conflicts priority of location shall decide.

Locator to
post claim.
Ib.

Art. 3498e. The locators of any mining claim shall post up at the center of one of the end lines of the same a written notice, stating the name of the location and of the claim and date of posting, and describe the claim by giving the number of feet in length and width and the direction the claim lies in length from the notice, together with the section, if known, and the county, and shall place stone monuments at the four corners and otherwise describe the corners so that they can be readily found. The notice shall be placed in a conspicuous place so it can be readily seen.

Application
for survey of
claim, requi-
sites of.
Ib.

Art. 3498f. The locator shall, within three months after the date of posting the required notice, sink a shaft at least ten feet in depth by four feet square, or a tunnel of the same dimensions ten feet in length, or an open cross cut twenty feet in length, four feet or more wide and ten feet in depth at its shallowest part, and shall within said time file with the county surveyor or the district surveyor of the county, as the case may be, an application in writing for the survey of the claim, which application shall be accompanied by a fee of twenty dollars, unless its tender is waived, and also with an affidavit attached thereto that the required work, signifying that it has been done, and that the locators have found valuable minerals on the claim; and the affidavit shall state the date of the first posting of the notice on the claim by the applicants, and further, that the notice has not been post-dated or changed in its date. Upon receiving said application and fee the surveyor shall record the application, together with the affidavit, and he shall thereupon forthwith proceed to survey said claim, and forward the field notes to the commissioner of the general land office within thirty days after filing the application, in default of which he shall pay the aggrieved party such damages as he may sustain, and in addition thereto shall be deemed guilty of a misdemeanor, and on conviction fined not less than twenty dollars nor more than one hundred dollars, and it shall be the duty of the applicants to see that the field notes are so returned. The fee of twenty dollars shall cover all the services provided for in this title. In all other cases enumerated in this title the fee shall be the same allowed county clerks for similar services.

Claimant
must do what
pending
patent.
Ib.

Art. 3498g. Annually after the filing of the application for a survey as hereinbefore provided, the claimant shall, until after the application is made for a patent, as hereinafter provided, do one hundred dollars' worth of work in developing each claim; but where claims adjoin, the amount of work may be done on one for all belonging to the same party. The value of such shall be estimated

at what it could be contracted for at a fair cash price, but the cost of tools and implements and the expense of going to and returning from the mine shall not be included in said estimate. Within one month after the expiration of each year the owner shall make and file with the surveyor his affidavit setting forth specifically what the work consists of in detail, and the value thereof. Upon the failure of any one of several owners to contribute his proportion of the expenditures required in this title within the necessary time, the co-owners who have performed the labor or made the improvements or paid the fees or other expenditures required in this title, may at the expiration of the year in which the same is to be done, give notice in writing or notice by publication in a newspaper published in the county where the claim is, if any; if none in such county, then in the newspaper published nearest the mine, for at least once a week for ninety days. If after such personal notice in writing or by publication such delinquent shall fail or refuse to contribute his proportion of the expenditure required by this title, his interest in the claim shall become the property of his co-workers who have made the required expenditures. An affidavit by the co-owners forfeiting the interest of such delinquent shall, when recorded in the office of the proper surveyor, be sufficient evidence of such delinquency.

Art. 3498h. When a tunnel is run for the development of a vein or lode or for the discovery of mines, the owner of such tunnel shall have the right of possession of all veins or lodes within two thousand feet of the face of such claim on the line thereof, not previously known to exist, discovered in such tunnel to the same extent as if discovered from the surface; and locations on the line of such tunnel of veins or lodes not appearing on the surface made by other parties after the commencement of the tunnel and while the same is being prosecuted with reasonable diligence shall be invalid; but failure to prosecute the work in the tunnel for six months shall be considered as an abandonment of the right of all undiscovered veins on the line of said tunnel.

Rights accruing to the claimant.
Ib.

Art. 3498i. Whenever the owners of any mining claim shall desire a patent, they shall, within five years after the filing of the application for survey, file their application for a patent upon their claim with the commissioner of the general land office, accompanied by the receipt of the state treasurer showing that twenty-five dollars per acre has been paid by the applicant for patent to the state treasurer. Whereupon such patent shall issue unless protest is filed as hereinafter provided for in article 3498k.

Conditions precedent to issue of patent.
Ib.

Art. 3498j. Within twelve months after the filing of the affidavit hereinafter provided for, any person or association of persons qualified as required by article 3498a, shall have the right to purchase and obtain patent by compliance with this title, or any of the lands of the state which are specified or included in article 3498a, containing valuable deposits of kaolin, baryta, salt, marble, fire clay, iron ore, coal, oil, natural gas, gypsum, nitrates, mineral paints, asbestos, marl, natural cement, clay, onyx, mica, precious stones or any other non-metallic mineral and stones valuable for ornamental or building purposes or other valuable building material, in legal subdivisions, in quantity not exceeding one section; provided, that where any such parties shall have heretofore expended, or shall hereafter expend, five thousand dollars in developing the aforesaid mineral re- one additional section and no more, and to include in the purchase sources of any of said lands, such party shall have the right to buy

Right of purchase.
Ib.

any section or part thereof on which the work may have been done. The land so purchased may be in different sections, and all embraced in one or more obligations, not to exceed the quantity stated. The purchaser shall pay not less than fifteen dollars per acre where the land shall be situated ten miles or less of any railroad in operation, and not less than ten dollars per acre where the land is over ten miles from such railroad, one-tenth of the purchase money to be paid in cash to the state treasurer on or before the expiration of the twelve months aforesaid; and the purchasers shall file the treasurer's receipt with the commissioner of the general land office, together with an obligation to pay the state of Texas the remainder in nine equal annual installments, with interest at four per cent per annum from date, subject to forfeiture as in other cases; and all said lands are reserved from sale or other disposition than under this title; and where application is made to buy any of the lands herein named except under this title, the purchaser shall swear that there are none of the minerals named in this title on said lands, so far as he knows or has reason to believe or does believe; provided, further, that any party hereinbefore named, who shall prior to the passage of this title have been the first to work on said lands for the development of said mineral resources, and who has not abandoned said work, and is qualified at passage of this title to buy, shall have a prior preference right of doing so for thirty days after this title goes into effect; provided, further, this article shall not authorize the sale of lands containing valuable deposits of gold, silver, lead, cinnabar, copper or other valuable metal; provided, further, that any person desiring to acquire any lands under the provisions of this article shall have the right to prospect said land for a period of twelve months before making any payment thereon, upon condition that said prospector shall file with the proper surveyor his affidavit in writing, setting forth that he has gone upon the land in good faith with the intention of purchasing the same under the provisions of this article, and in said affidavit give a reasonable description of said land. After the filing of said affidavit the said surveyor shall immediately forward same to the commissioner of the general land office, who shall take said section off the market until the expiration of said twelve months after the filing of said affidavit with the surveyor.

Contest of
patent.
1b.

Art. 3498k. Any person desiring to contest the issuance of patent may do so by filing with the commissioner of the general land office a protest setting forth the grounds of objection generally, and that protestant has an interest in the subject matter, which protest shall also state that the same is presented in good faith and not to injure or delay the applicants or any of them, and the same shall be verified by affidavit. Whereupon it shall be the duty of the commissioner to withhold patent until the controversy is ended; provided, that if the protestant shall not within thirty days after filing his protest institute suit in the court having jurisdiction thereof in the county where the claims are located, his protest shall constitute no further barrier to the issuance of patent. A certified copy of the petition or a certificate of the clerk of the court where suit is pending shall be sufficient evidence to the commissioner of the pendency of the suit, and of the date of filing said suit. When the land in controversy lies partly in two counties suit may be brought in either. More than one claim shall not be embraced in the same patent or application. The suits here provided for shall be entitled to precedence of trial on the docket.

Art. 3498l. All claims upon which patent has **not been applied** for within five years next after the application for survey, or which have not been surveyed and the field notes returned to the general land office within the time prescribed therefor as hereinbefore provided, or upon which the assessment work has not been done, an affidavit therefor filed as provided by this article, shall be and are declared forfeited without judicial action of any kind, and subject to location as originally, but not by any one interested in the claim at the time of forfeiture, and any location for or on behalf of any such party shall be wholly void. Whenever any such claim shall be relocated, the locators and each of them shall make affidavit that the location is made without any contract or agreement of any kind that any of the parties owning an interest in the location before the relocation has or is to have any interest in the same. In all other cases where affidavit is required by this title it may be made by one or more of the parties cognizant of the facts.

Forfeiture of claims.
Ib.

Art. 3498m. No claim which has been forfeited for any cause shall be subject to relocation for a period of thirty days next thereafter, and the party owning the same may apply to the land commissioner within that time for relief, and if it appear to him from the proof submitted that the forfeiture was not occasioned by the negligence of the owner, but by circumstances which he could not reasonably control, the commissioner may within that time, in his discretion, grant relief against the forfeiture, and if he be granted such relief he shall at once forward his order to that effect to the surveyor, who shall file the same for record in his office.

Relocation of forfeited claim.
Ib.

Art. 3498n. Whenever any application shall be made to buy or obtain title to any of the lands embraced in article 3498a, except where the application is made under this title, the applicant shall make oath that there is not, to the best of his knowledge and belief, any of the minerals embraced in this title thereon, and when the commissioner has any doubt in relation to the matter he shall forbear action until he is satisfied. Any such sale or disposition of said lands shall be understood to be, with the reservation of the minerals thereon, to be subject to location as herein provided.

Applicant to make oath.
Ib.

Art. 3498o. Claims usually called placers, including all forms of metallic deposits, excepting veins of quartz or rock in place, shall be subject to entry and patent under like circumstances and conditions and upon similar proceedings as are provided for vein or lode claims. All placer claims located shall conform as near as practicable with existing surveys and their subdivisions, and no such location shall include more than forty acres for each individual claimant, and shall not exceed three hundred and twenty acres for any association of persons. The price which shall be paid for such placer shall not be less than ten dollars per acre, together with all costs of proceedings as before provided.

Placer claims subject to location.
Ib.

Art. 3498p. Where non-mineral land not contiguous to the vein or lode is issued by the prospector of such vein or lode for mining or milling purposes, such non-adjacent surface ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location of such non-adjacent lands shall exceed ten acres, and payment for the same must be made at the same rate as fixed by this title for the superficies of the lode. The owner of a quartz mill or reduction works, not owning a mine in con-

Application may embrace non-adjacent non-mineral land.
Ib.

nection therewith, may also receive a patent for a mill site, as provided in this section.

Purposes for which timber may be felled.
Ib.

Art. 3498q. Any owner or worker of mining claim under this title is authorized to fell and remove for building and mining purposes any timber or any tree growing or being upon unoccupied lands as described in article 3498a, said lands being mineral and subject to entry only as mineral lands, under such rules and regulations as may be prescribed for the protection of timber and undergrowth upon such lands and for other purposes.

Vested rights not affected.
Ib.

Art. 3498r. Nothing in this title shall ever be so construed as to either destroy, invalidate or impair any valid claim, right or interest existing in, to or concerning any lands whatever at the passage of this title, of any pre-emptor, purchaser, claimant, actual settler, locator or other person whatsoever.

Proceeds appropriated.

Art. 3498s. The net proceeds of all sales of mining lands under the provisions of this title shall inure to the benefit of the state and the respective funds for which the lands mentioned in article 3498a are now set apart under the constitution and the laws of the state, and it shall be the duty of the comptroller, state treasurer and commissioner of the general land office to see to it and have said proceeds so paid rightly placed to the credit of the particular and proper fund.

Surveyors to administer oaths; repealing clause.

Art. 3498t. For the purpose of effectually carrying out the provisions of this title all county or district surveyors are hereby especially authorized and empowered to administer oaths, take affidavits and make certificates thereof; provided, further, that all laws and parts of laws in conflict with this title, or any part thereof, are hereby especially repealed.

TITLE LXXII.

Minors.

CHAPTER ONE.

SUITS BY NEXT FRIEND.

	Article		Article
When minor may sue by next friend.....	3498u	Disposition of such collections.....	3498x
Next friend may compromise.....	3498v	Claims against such judgments, how ad-justed	3498y
May collect certain personal judgments	3498w		

Article 3498u. Any minor having a sufficient cause of action, and who has no legal guardian, can bring suit in any of the courts of this state by next friend, and such next friend shall have the same rights concerning such suit and the matter therein involved as if he were guardian of such minor; provided, he shall not be relieved from giving security for cost, or affidavit in lieu thereof, and can not collect the proceeds of any moneyed judgment he may recover, except as herein specified.

When minor may sue by next friend. (Acts 1893, p. 3.)

Art. 3498v. Such next friend, or the attorney of record, of such minor may enter into such agreed judgment or compromise in such suit as the court may approve, and the decree entered upon such agreement or compromise, when approved by the court, shall be forever binding on said minor, and can divest title out of the min[or] or vest it in him, when the court is satisfied such decree is for the best interest of the minor, under all the circumstances; and the court may hear evidence touching upon such agreement or compromise before approving the same.

Next friend may compromise, etc. Ib.

Art. 3498w. Whenever in any suit pending in this state any minor recovers a personal judgment for money or other personal property in which the interest of the minor does not exceed the value of five hundred dollars, and said minor has no guardian, such next friend or any person authorized by the court to do so, by an order entered of record, may take charge of said money or property for the benefit of said minor upon giving bond in such sum as shall be ordered by the court, which shall not be less than double the value of the property, conditioned that he will pay over said money and lawful interest thereon and deliver said property and its increase to the minor when he becomes of age, or to his legally qualified guardian when demanded, and that he will pay or deliver the same to such person appointed by the court, when ordered by the court to do so, and that he will use such money or property for the benefit of the minor as ordered by the court.

May collect certain personal judgments, etc. Ib.

Art. 3498x. Such person who takes such money or property shall receive no fees or commissions for caring for or handling the same, but shall receive such compensation for caring for or handling the same as may be allowed by the court, and shall make such disposition thereof and at all times as the court may order; may be re-

Disposition of such collections; compensation, etc. Ib.

quired to return such money or property into court upon the order of the court, when the court may make such further disposition of the money or property as is deemed best for the minor.

Claims against such judgments, how adjusted. Ib.

Art. 3498y. Whenever any attorney or other person has any interest in such recovery or judgment the court may hear evidence as to such interest, and if deemed just shall order such claim, or such part as is deemed just, to be paid to such person who is entitled to receive the same.

CHAPTER TWO.

REMOVAL OF DISABILITIES OF.

	Article		Article
When may have disabilities removed.....	3499	}	Shall be deemed of full age, when.....
Proceeding for removal.....	3500		Notice of proceeding, on whom served.....
			3501 3502

When may have disabilities removed. (Acts of 1881, p. 16, §1.)

Article 3499. Any minor in this state over the age of nineteen years, who may desire to have his disabilities as a minor removed, shall, by a bill or petition, present to the district court of the county where he may reside the cause or causes existing which make it advisable or advantageous to said minor to have his disabilities removed, which bill or petition shall be sworn to by some person cognizant of the facts set out in said bill or petition.

Proceedings for removal. Ib. §2.

Art. 3500. Said petition or bill shall be docketed on the trial docket of the court, and may be heard by the court either in regular order or at any time during term time, and if it shall appear to the court that the ground or causes set out are sufficient, and that it is advisable, or will be advantageous to such minor, in person or property, to have his disabilities as a minor removed, the court shall enter up a decree removing the disabilities of said minor, and cause it to be entered of record among the decrees and judgments of court.

Shall be deemed of full age. Ib. §3.

Art. 3501. After the removal of such disabilities of minority, the said minor shall be deemed and held for all legal purposes, of full age, and shall be held responsible, and shall have all the privileges and advantages as if he were of full age, saving only that he shall not vote until he arrives at the full age of twenty-one years.

Notice, on whom served. Ib. §4.

Art. 3502. In all proceedings under this title, a copy of the petition shall be served upon the father of the minor, if living within the state, and, if he be dead, that fact shall be mentioned in the petition. If the father of the minor be not living, then a copy of the petition shall be served upon the county judge of the county in which the proceeding is instituted, and in all such cases the court hearing the application shall appoint a special guardian, whose duty it shall be, in connection with the county judge, to represent the true interests of the minor, as they shall understand it, in aiding or resisting the application of the minor. An allowance shall be made by the district judge presiding to the special guardian, which shall be paid out of the estate of the minor.

CHAPTER THREE.

RESCUE FROM IMPROPER CUSTODY.

	Article	Article
Proceeding to remove minor from im- proper custody.....	3502a	Habeas corpus available.....3502b

Article 3502a. Upon the petition of any citizen or citizens to the county judge where he or they reside, setting forth that certain persons other than the natural guardian have in charge a girl or boy, child or children, under twelve years of age, to the injury of such child or children, the county judge so petitioned shall determine at a regular or called term the matter of such petition, and by order of court rescue such child or children from the custody of such person or persons and place them in the custody of such person so petitioning, or other suitable person, upon satisfactory proof that such change will benefit such child or children.

Proceeding to remove minor from improper custody. (Acts of 1895, p. 54.)

Art. 3502b. Similar proceedings may be had by writs of habeas corpus.

Habeas corpus available. Ib.

TITLE LXXIII.

Notaries Public.

	Article		Article
Governor shall appoint.....	3503	Powers, etc.	3511
Bond and oath.....	3504	Shall keep book, etc.....	3512
To be removed, when.....	3505	May take depositions, etc.....	3513
Office to become vacant, when.....	3506	Copies of records, etc.....	3514
Seal, and what it shall contain.....	3507	Printed lists to be sent to county clerks	
Duty of county clerk when office becomes		by secretary of state.....	3515
vacant.....	3508	To qualify, when.....	3516
Their powers.....	3509	Clerk shall notify secretary of state,	
Duty on vacating office.....	3510	when, etc.....	3517

Governor shall appoint, etc. (Acts of 1889, p. 89; acts of 1885, p. 1.)

Article 3503. There shall be appointed by the governor, by and with the advice and consent of the senate, a convenient number of notaries public for each organized county, and one notary public for each unorganized county, in this state, who shall hold their offices for the term of two years from the first day of June after appointment at a regular session of the legislature; provided, that nothing herein shall be so construed as to exempt them from jury service.

Bond and oath. (Acts of 1881, p. 94.)

Art. 3504. 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.

To be removed, when. Ib. §3.

Art. 3505. 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.

Office to become vacant, when. Ib. §4.

Art. 3506. 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.

Seal, and what it shall contain. Ib. §5.

Art. 3507. 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; and any notary public or other officer required by law to keep and use a seal, who shall use in attesting any instrument any seal not such as is required by law to keep and use for that purpose, or shall fail or refuse to deliver to the county clerk of his county his seal, record books and all public papers pertaining to his

office, or any of them, in case of his resignation or removal from the county, shall be punished as provided in the Penal Code.

Art. 3508. Whenever the office of notary public shall be vacated by resignation, removal or death, it shall be the duty of the county clerk of the county where said notary resides to obtain and deposit in his office the seal, record books and all public papers belonging in the office of said notary; provided, that the seal of any notary vacating his office may be sold by the owner thereof to any qualified notary public in the county.

Duty of county clerk when office becomes vacant.
Ib. §6.

Art. 3509. Notaries public may take acknowledgments or 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 proof under their hand and official seals; they may take the examination and acknowledgments of married women to all deeds and instruments of writing, conveying or charging their separate property, of their interest in the homestead, in the manner provided by law.

Their powers.
Ib. §7.

Art. 3510. [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.

Art. 3511. 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 protest, and certify under his hand and seal the truth of the matters or things done by virtue of his office.

Shall have power to administer oaths, etc.
Ib. §8.

Art. 3512. 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 acknowledgments, 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 of such witness, whether such witness is personally known to him or introduced; 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 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.

Shall keep a well-bound book.
Ib. §9.

Art. 3513. 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 of this state.

May take depositions.
Ib. §10.

Art. 3514. Copies of all records, declarations, protests and other official acts of notaries public may be certified by the county clerk with whom they are deposited, and shall have the same authority as if certified by the notary by whom they were originally made.

Copies of records.
Ib. §11.

Art. 3515. When notaries public have been appointed by the governor and shall have qualified, it shall be the duty of the secretary of state to furnish to the clerks of the county courts a printed

Printed list to be furnished by secretary of state.
Ib. §12.

list of all notaries public so appointed and qualified, and it shall be the duty of said clerks to preserve said list for public inspection and post a copy thereof on the court house door.

To qualify,
when.
Ib. §13.

Art. 3516. 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 within ten days, pay for his commission and qualify according to law; provided, that if said party be absent from the county, or sick at the time of reception of said commission by the clerk, then he shall have ten days from his return to said county in which to appear and qualify.

Clerk shall
notify secre-
tary of state.
Ib.

Art. 3517. The clerk receiving the commission shall indorse thereon the day on which notice was given, and if the party pay the state fee for commission and qualify according to law, the said clerk shall notify the secretary of state of his qualification, giving date of same, and remit the fee to said officer; but if the party fails to qualify and pay the fee within the limited time the appointment shall be void, and the clerk shall certify on the back of the commission that the party has failed to qualify, and return it to the secretary of state.

TITLE LXXIV.

Officers—Removal of.

CHAPTER ONE.

REMOVAL OF STATE AND CERTAIN DISTRICT OFFICERS.

Article	Article		
State and district officers removable by impeachment.....	3518	Preceding article shall apply to the criminal district judge.....	3524
Judges of supreme, appellate and district courts, and commissioner of insurance, removed by address.....	3519	Jurisdiction of supreme court in such cases.....	3525
Cause for removal to be set out.....	3520	Presentment shall be founded upon what.....	3526
Notice to be given.....	3521	Supreme court may issue process, etc.....	3527
Vote, how taken.....	3522	State officers appointed by the governor removed, how.....	3528
District judges removed by supreme court.....	3523		

Article 3518. [3377] The governor, lieutenant-governor, attorney-general, treasurer, commissioner of the general land office, comptroller, commissioner of agriculture, insurance, statistics and history, and the judges of the supreme court, court of criminal appeals, courts of civil 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. 3519. [3378] The judges of the supreme court, court of criminal appeals, courts of civil appeals, district courts, the judge of the criminal district court of Galveston and Harris counties, and the commissioner of agriculture, 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.)
Ib.

Art. 3520. [3379] The cause for such removal shall be stated at length in such address and entered on the journals of each house.

Cause for removal to be set out.
Ib.

Art. 3521. [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.

Notice to be given.
Ib.

Art. 3522. [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. 3523. [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. 3524. [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.

Jurisdiction of supreme court in such cases.
Ib.

Art. 3525. [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 courts of civil appeals.

Presentment shall be founded upon, what.
Ib.

Art. 3526. [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.

Supreme court may issue process, etc.

Art. 3527. [3386] The courts of civil appeals 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. 3528. [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.

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Certain convictions work a removal from office. (Const., art. 5, §8.)

Article 3529. [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 supersedes order of removal.

Art. 3530. [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. 3531. [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.

Art. 3532. [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.

Causes to be set forth in writing. (Const., art. 5, §24.)

Art. 3533. [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.

"Incom- petency," what is. (1 Bish. Cr. L., §§230, 237, 240.)

Art. 3534. [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 mis- conduct," what is. (Trigg v. State, T. L. J., June 26, 1878; 2 Bouv. Dic. in verb. Bishop supra.)

Art. 3535. [3394] The two preceding articles shall apply also to mayors and aldermen, whose removal is hereafter provided for in this title.

Two preced- ing articles apply to may- or and aldermen.

Art. 3536. [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 drunken- ness," what is. (Trigg v. State, Bish. Cr. Law, ch. 15, §§298, 305.)

Art. 3537. [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 26, 1876.) (Act Aug. 16, 1876, p. 135, §3.)

Art. 3538. [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.

"Drunken- ness not habitual" defined. (Trigg v. State.) (Act July 31, 1876, p. 76, §§1, 4.)

Art. 3539. [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 con- victed. (Act July 21, 1876, p. 76, §4.)

Art. 3540. [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 convic- tions suf- ficient ground for removal, etc.

Art. 3541. [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.

Proceedings,
how com-
menced, and
by whom.

Art. 3542. [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.

Requisites of
the petition.

Art. 3543. [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.

General issue
alone submit-
ted—verdict.
(Trigg v.
State, T. L.
J., June 26,
1876.)

Art. 3544. [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; 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. 3545. [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 cost of the relator, and no appeal or writ of error shall be allowed from such action of the judge.

Application
made in
vacation.

Art. 3546. [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. 3547. [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. 3548. [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. 3549. [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 sus-
pended from
office, how.

Art. 3550. [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 suffi-

cient 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.

Art. 3551. [3410] An appeal or writ of error to the court of civil appeals may be sued out by either party from the final judgment in these cases as in other civil cases.

Appeal or writ of error will lie.

Art. 3552. [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 courts of civil appeals.

Bond for costs, when.

Art. 3553. [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.

Relator to give security for costs.

Art. 3554. [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.

Against district attorneys, where commenced.

Art. 3555. [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.

Criminal district attorney included in district attorney.

Art. 3556. [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. 3557. [3416] In these cases an appeal may be taken or writ of error be made returnable to the court of civil appeals, 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. (Amend. 1835, Sen. Jour., p. 480.)

Art. 3558. [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
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Order or removal to be embodied in judgment3560	Removal of clerk of district court.....3564
Public weigher, how removed.....3561	Order of removal to be embodied in judgment3565
Removal of clerk of supreme court.....3562	

Article 3559. [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. 3560. [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. 3561. [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.)

Clerk supreme court, how removed. (Const., art. 5, §4.)

Art. 3562. [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 of court of appeals, how removed. (Const., art. 5, §6; amend. 1895, Sen. Jour., p. 480.)

Art. 3563. [3422] The clerks of the court of criminal appeals and courts of civil appeals shall be subject to removal by their respective court for good cause entered on the minutes of the court.

Clerk of district court, how removed. (Const., art. 5, §9.)

Art. 3564. [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.

Order of removal to be embodied in judgment.

Art. 3565. [3424] When so removed the order for his removal shall be embodied in the judgment of conviction.

CHAPTER FOUR.

REMOVAL OF MAYORS AND ALDERMEN.

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Who shall try a mayor.....	3570
Rules which govern proceedings and trial.....	3571
Judgment.....	3572
Officer removed ineligible for two years.....	3573
This chapter does not apply, when.....	3574

Causes of removal. (Act March 6, 1875, p. 63, §§1, 2.)

Article 3566. [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.

Complaint against an alderman, and proceedings thereon. Ib. §2.

Art. 3567. [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. 3568. [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. 3569. [3428] When any complaint, such as is prescribed in article 3567, 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. 3570. [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 proceedings and trial.

Art. 3571. [3430] The rules governing other proceedings and trials in the courts of justice of the peace, mayors and recorders shall govern in the cases provided for in this chapter.

Judgment. Ib. §5.

Art. 3572. [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.

Art. 3573. [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.

Officer re-
moved ineli-
gible for two
years.
Ib.

Art. 3574. [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.

This chapter
does not
apply, when.
Ib.

TITLE LXXV.
Official Bonds.

CHAPTER ONE.

THE RECORD OF OFFICIAL BONDS AND THE RELIEF OF SURETIES THEREON.

	Article		Article
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Sureties on, may be relieved.....	3576	Discharge of sureties.....	3579
Officer shall cease to act, etc.....	3577		

Official bonds to be recorded. Article 3575. [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.

Sureties on, to be relieved. (Act Aug. 12, 1876, p. 132, §1.) Art. 3576. [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.

Officer shall cease to act, etc. Ib. Art. 3577. [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.

Must give new bond. Ib. Art. 3578. [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.

Discharge of sureties. Ib. 2. Art. 3579. [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.

CHAPTER TWO.

OF OBTAINING NEW SURETIES ON OFFICIAL BONDS.

	Article		Article
Commissioners' court may require new bond, etc.....	3580	Officer to be cited.....	3581
		No appeal allowed.....	3582

Commissioners' court may require new bond, etc. (Act July 22, 1876, p. 54, §17.) Article 3580. [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 re-

quire new bonds or additional sureties to be given, as the case may require.

Art. 3581. [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. 3582. [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 LXXV. A.

Pardon Advisers—Board of.

Board created.....	Article 3582a
--------------------	------------------

Board
created.
(Act 1893.)

Article 3582a. The governor is hereby authorized to call to his aid, for a time not exceeding one hundred days per annum, two qualified voters of this state, who shall perform such duties as may be directed by him, consistent with the constitution, as he may deem necessary in disposing of all applications for pardon. The said two voters shall be known as a board of pardon advisers, and shall be paid out of any money in the state treasury, not otherwise appropriated, five dollars each per day they may so serve, on voucher approved by the governor.

TITLE LXXVI.

Partnerships—Limited.

Article	Article
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Article 3583. [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.

Limited partnerships authorized. (Act May 12, 1846, p. 279, §1.) P. D. 4717 et seq.

Art. 3584. [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 and special partners. Ib. §2.

Art. 3585. [3444] The general partners only shall be authorized to transact business and sign for the partnership and to bind the same.

General partners only to act. Ib. §3.

Art. 3586. [3445] The persons desirous of forming such partnership shall make and severally sign a certificate, which shall contain—

Such partnerships, how formed. Ib. §4.

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.

Art. 3587. [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.

Certificate to be acknowledged. Ib. §5.

Art. 3588. [3447] The certificate so acknowledged and certified shall be filed in the office of the clerk of the county court of the

And filed and recorded. Ib. §6.

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.

General partner to file affidavit.
Ib. §7.

Art. 3589. [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.

Prerequisites indispensable.
Ib. §8.

Art. 3590. [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.

Terms to be published.
Ib. §9.

Art. 3591. [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.

Publisher's affidavit.
Ib. §10.

Art. 3592. [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.

Renewals to be with like formalities.
Ib. §11.

Art. 3593. [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.

Certain alterations a dissolution.
Ib. §12.

Art. 3594. [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.

Firm name.
Ib. §13.

Art. 3595. [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.

Suits by and against.
Ib. §14.

Art. 3596. [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.

Capital of special partner not to be withdrawn.
Ib. §15.

Art. 3597. [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 part-

nership; 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 profits shall remain to be divided he may also receive his portion of such profits.

Art. 3598. [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. 3599. [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.

Art. 3600. [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.

Partners to account, and liability for fraud. Ib. §§18, 19.

Art. 3601. [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 by partnership void, when. Ib. §20.

Art. 3602. [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.

Assignments in contemplation of insolvency. Ib. §21.

Art. 3603. [3462] Every special partner who shall violate any provision of the last two preceding articles, 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.

Effect of concurrence by special partner. Ib. §22.

Art. 3604. [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.

Partnership creditors preferred. Ib. §23.

Art. 3605. [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.

Dissolution before the time agreed on. Ib. §24.

TITLE LXXVII.

Partition

CHAPTER ONE.

PARTITION OF REAL ESTATE.

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Joint owner
may compel
partition.

Article 3606. [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.

Petition for,
and what it
shall state.

Art. 3607. [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—

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.

Citation and
service.

Art. 3608. [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, where
defendant is
unknown.
(Acts of 1879,
p. 46.)

Art. 3609. 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.

Art. 3610. [3468] Upon the hearing of the cause the court shall determine—

Court shall determine, what.

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.

Art. 3611. [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.

Decree of the court and appointment of commissioners.

Art. 3612. [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.

Writ of partition.

Art. 3613. [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.

Service of writ of partition.

Art. 3614. [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.

Court may also appoint surveyor.

Art. 3615. [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.

Writ returnable, when, and return thereof.

Art. 3616. [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.

Commissioners shall proceed to partition, etc.

Art. 3617. [3475] Should the commissioners deem it necessary, they may cause to be surveyed the real estate to be partitioned into several tracts or parcels.

May cause land to be surveyed.

Art. 3618. [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 ad-

Shall divide real estate, how.

vantages 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. 3619. [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. 3620. [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. 3621. [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 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.

Objections may be filed to report, etc.

Art. 3622. [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.

Partition not prejudicial to reversion, etc.

Art. 3623. [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.

Each party shall hold in severalty, subject, etc.

Art. 3624. [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.

Decree of court shall vest title. (Ross v. Armstrong, 25 Texas Sup., p. 355.)

Art. 3625. [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.

CHAPTER TWO.

PARTITION OF PERSONAL PROPERTY.

Article	Article
Part owner may compel partition.....3626	Decree of court, executed how.....3629
Suit shall be commenced in what court..3627	Property shall be sold, when.....3630
Court shall ascertain, what.....3628	How sold, and partition of proceeds.....3631

Article 3626. [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.)
P. D. 4711.

Art. 3627. [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.

Suit shall be commenced, in what court.
Ib.

Art. 3628. [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. 3629. [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. 3630. [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.

Art. 3631. [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.

How sold and partition of proceeds.
Ib.
P. D. 4715.

CHAPTER THREE.

MISCELLANEOUS PROVISIONS.

Article	Article
Provisions of this title shall not affect, what3632	Pay of commissioners.....3634
Rules of pleading, practice and evidence.3633	Costs to be adjudged, how.....3635

Article 3632. [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.

Provisions of this title shall not affect, what.

Art. 3633. [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.

Rules of pleading, practice and evidence.

Art. 3634. [3492] The commissioners in partition and the surveyor, if any has been appointed, shall receive for their services three

Pay of commissioners.

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
adjudged,
how.

Art. 3635. [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 LXXVIII.

Pawnbrokers.

Article	Article
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Pawnbroker shall give bond, and its requisites3637	Report of sale to be made, and what the same shall show.....3645
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Article 3636. [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. 3637. [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. 3638. [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. 3639. [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. P. D. 7168p.

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.

Art. 3640. [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.

Property pawned shall be sold after notice, when.
Ib.
P. D. 7168q.

Art. 3641. [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.

How notice shall be given.
Ib.
P. D. 7168q.

Art. 3642. [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 court house of such county.

Advertisement shall state, what, and copy shall be filed in office of county clerk.

Art. 3643. [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 persons 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. 3644. [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 sales shall be made upon Sunday or upon a legal holiday.

Report of sales to be made, and what the same shall show.

Art. 3645. [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. 3646. [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 auctioneer's commissions, shall be allowed and deducted.

Owner or depositor entitled to surplus for thirty days after sale.

Art. 3647. [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. 3648. [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. 3649. [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.

Art. 3650. [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.

Party injured
may sue upon
bond.

Art. 3651. [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.

Injured parties
may sue
officer, when.
Ib.
P. D. 7168s.

Art. 3652. [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.

Common law
shall govern,
except, etc.

TITLE LXXIX.

Penitentiaries and Convicts.

CHAPTER ONE.

BOARD OF COMMISSIONERS.

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Penitentiary board, how constituted; compensation and duties. (Acts of 1891, p. 99, §1.)

Article 3653. The governor shall appoint by, and with the advice and consent of the senate, a penitentiary board to consist of three commissioners, citizens of this state, and good, practical business men, who shall hold their office for two years, and until the appointment and qualification of their successors, and in case of vacancy in the same to be filled by executive appointment for the unexpired term. Two members of said board shall constitute a quorum for the transaction of business, and its proceedings shall be subject to the approval of the governor, and shall be entered of record and kept in a well-bound book. It may appoint a secretary to keep a record of its proceedings, to receive such remuneration as the board may determine, provided the legislature does not otherwise provide. The members of said board shall each receive six dollars per day and actual traveling expenses while in performance of official duties.

Powers and duties. Ib. §2.

Art. 3654. The said board shall have the general management and control of the state penitentiaries and of all convicts sentenced to said penitentiaries, whether within or without the walls thereof. It shall make or approve all contracts for the building of any new penitentiary, and for any additions, repairs and improvements necessary to be made in connection with the penitentiary or convict system of this state, on the terms prescribed by law, or in the absence thereof, on such terms as it may consider for the best interests of the state. It shall have power to purchase or cause to be purchased, with such funds as may be at its disposal, not otherwise appropriated, any lands, buildings, machinery and tools necessary for the use, preservation and operation of the penitentiaries, to the end that the largest number of convicts that can be comfortably accommodated and made self-supporting may be confined therein; and until adequate provisions be made by the legislature for the confinement and employment of all convicts who may be profitably utilized within the walls; and said board may erect and operate for the state in each of the penitentiaries a factory for the manufacture of cotton goods, cotton and jute bagging; provided, that in the judgment of the penitentiary board it shall be deemed practicable and can be done without loss to the state; the said board may employ

the excess of convicts at labor outside the walls, either under the contract system or state account system, under such regulations, conditions and restrictions as it may deem best for the welfare of the state and the convicts; and said board shall, when it has means at its disposal which can be so used, from time to time purchase or lease and equip a farm or farms upon which convicts suitable for farm labor who can not be made self-supporting inside the walls shall be worked on state account. Said board shall have power to contract with railroad corporations or other common carriers for transportation facilities for said Texas institutions, and to exchange for such facilities labor of state convicts or the product of the manufactories of said institutions, upon such terms, prices and rates as it may deem for the best interests of the state, and the financial agent of the penitentiary shall honor and pay any draft or drafts drawn on him by said penitentiary board drawn for this purpose, when he has any surplus funds in his hands or at his disposal belonging to said penitentiaries. But no such farm or farms shall ever be purchased by said board except it be upon the advice, consent and direction of the governor. And said board shall, as soon as practicable, place all state convicts either inside the walls of the penitentiaries or on farms, and work the same on state account.

Art. 3655. The system of labor in the state penitentiaries shall be the state account system or contract system, or partly one and partly the other, as shall in the discretion of the penitentiary board and the governor be deemed for the best interest of the state; but no contract shall be let for any of such convict labor if equally remunerative employment can be furnished by the state and worked on state account. The said board shall not make nor approve any contract for the lease of the penitentiaries or either of them, nor shall any contract ever 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 state shall never be deprived of the right to direct how, at any and all times and under all circumstances, its convicts shall be lodged, fed, clothed, quartered, worked and treated, and the management and discipline of convicts shall in all cases remain under control of the state and officers employed and paid by the state.

System of
labor.
Ib. §3.

Art. 3656. It shall be the duty of said penitentiary board to make suitable provision and regulations for the safe and speedy transportation of convicts from the counties where sentenced to the penitentiaries, or to the state reformatory, or state convict farm or farms, as the case may be, either by contract with private parties for the transportation of such convicts, or by transporting said convicts on state account by the state. And should said board contract to have said convicts transported by private parties, it shall cause said contractors to give a good and sufficient bond in such an amount as said board may deem proper, payable to the state of Texas, and to be approved by said board and the governor, conditioned upon the faithful performance of their duty under said contract, and under such rules and regulations as may be prescribed by said board or may now or hereafter be prescribed by law.

Transportation of
convicts.
Ib. §4.

Art. 3657. The board shall have the power to condemn useless or worn-out property of any description in and about the penitentiaries or belonging thereto, and cause the same to be destroyed or sold, and it also shall have the power to sell or exchange any land or other property belonging to the state for the use of the penitentiaries, or either of them, when the state's interest will be benefited thereby;

Power to con-
demn prop-
erty, when.
Ib. §5.

and any conveyance it shall make shall be valid and binding when approved by the governor and attorney-general. The title to land purchased by said board shall be made to the governor and his successors in office for the use of the penitentiaries, and the same shall be passed upon and approved by the attorney-general.

Biennial re-
ports.
Ib. §6.

Art. 3658. The board shall cause to be made biennially a full and complete inventory and valuation of all lands, buildings, machinery, tools, live stock and property of every description belonging to the penitentiaries and penitentiary system, which inventory and appraisal shall be made just previous to the date of the biennial report, and a full synopsis thereof shall be contained in the biennial report of the financial agent.

May prescribe
rules, etc.
(Acts of 1881,
p. 39, §7.

Art. 3659. The board may at any time issue such orders and prescribe such rules and regulations for the government of the penitentiaries, not inconsistent with law, as they may deem proper, in order to supply any defect in the general law in regard to prison management and discipline, and to provide for such details as are not embraced therein, and for such contingencies as may at any time arise concerning the management of the penitentiaries and their proper and successful operation, and such rules and regulations shall be made with the view to carry out the general principles on which the penal laws are founded and the design for which the penitentiary system is established, and shall be binding upon all officers of penitentiaries, under-officers, lessees, employes and all persons whatsoever in any way connected with the penitentiaries or their management, or with the convicts either within or without the walls thereof.

Shall have
rules printed,
etc.
Ib. §8.

Art. 3660. The board shall have all laws, rules, regulations and by-laws printed in pamphlet form, for the information and guidance of all connected with the management of the penitentiaries or convict labor, and such parts of said rules as refer to the duties of subordinate officers and convicts shall also be printed in suitable form and posted in conspicuous places about the prisons, for the information of all concerned.

Board author-
ized to pur-
chase and
equip state
farms, etc.
(Act 1893, p.
122.)

Art. 3660a. The penitentiary board are hereby authorized to purchase and equip, with the consent of the governor, agricultural lands or improved farms, to be by them selected with a view to productiveness of soil and accessibility to railroads, for the purpose of establishing thereon state farms, and employing thereon convict labor on state account.

Payments,
how made.
Ib.

Art. 3660b. Upon making the purchases provided for in the preceding article, the funds necessary therefor shall be loaned by the state board of education, when available, out of the permanent school fund, to the penitentiary board, on certificates of indebtedness issued by said penitentiary board officially, and countersigned by the governor, and in a form to be prepared by the attorney-general. Said loans shall bear interest at the rate of five per centum per annum, payable annually, for the available school fund, and the principal shall be payable back to the permanent school fund as follows: In twenty annual installments of fifteen thousand dollars each, the first of which shall be due and payable in five years from the date of said loan, and the remaining payments annually thereafter until the last of the twenty payments has been made. The penitentiary board shall, from time to time, make suitable provision for the payment of said installments and interest out of the revenues of the state penitentiaries and state farms. The penitentiary board shall not make purchases under the provisions of this law amounting to more than

three hundred thousand dollars in the aggregate; provided, that before any purchase shall be made or money paid under the provisions of this law, the title to such lands shall be submitted to the attorney-general of this state, and he shall file with the state board of education his opinion in writing as to his opinion of such title; and said state board of education shall not loan any of the school fund for the purchase of such lands until the attorney-general shall file with said board a written opinion that the party selling such lands can convey a good and perfect title to said lands; provided further, that all lands purchased under the provisions of this law shall be regarded and held in trust for the permanent school fund of the state until the return of the loan made for their purchase.

CHAPTER TWO.

SUPERINTENDENT AND HIS DUTIES.

Article	Article
Term of office—vacancy, how filled.....	3661
Shall reside, where.....	3662
Principal officer of penitentiary.....	3663
Shall have access to all places about the penitentiary.....	3664
May administer oaths.....	3665
Monthly reports.....	3666
Shall keep a record.....	3667
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His duties.....	3669
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Shall keep records.....	3672
Shall receive convicts.....	3673
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Article 3661. In order that there may be a more efficient supervision of the penitentiaries, and a uniformity in the management of the same, and of the discipline and general treatment of the state convicts whether confined within or without the walls, the governor shall appoint, by and with the advice and consent of the senate, a superintendent of penitentiaries, 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 office the same may be filled by executive appointment for the unexpired term.

Term of office, vacancy, how filled.
Ib. §9.

Art. 3662. The superintendent of penitentiaries shall reside and have his office at such place as may be designated by the penitentiary board. He shall have a general supervision and control over all penitentiaries established or to be established in the state, over the discipline, management, treatment, and control of all convicts who may be imprisoned in said penitentiaries, or who may be operated outside the walls thereof, and over all officers, overseers and guards connected therewith. He may assign convicts to such penitentiary or camp as he may deem proper; provided, that in case of a lease of the penitentiaries, or any of them, or of the convicts, or any number of them, such control shall not extend to the labor of the convicts, except as may be provided by law, or by the terms of contract; nor shall he nor any other officer do anything calculated in any manner to interfere with the rights of the lessees under their contract.

Shall reside, where.
Ib. §10.

Art. 3663. The superintendent, as the principal executive officer of the penitentiaries, shall have all powers necessary to a discharge of his duties, subject to the restrictions imposed on him by law. He may designate such number of under-officers, keepers, guards, etc., to be appointed by the assistant superintendents and inspectors, with his approval, if not provided for in the rules, as he may deem necessary for the safe keeping of the convicts, or for the maintenance of discipline, and he may discharge any under-officer or employe for official misconduct, or whenever, in his judgment, the public interest shall so require.

Principal executive officer of penitentiary.
Ib. §11.

Shall have access to all places about penitentiary.
Ib. §12.

Art. 3664. The superintendent shall at all times have access to the penitentiaries and other places where convicts are employed, and shall, unless otherwise officially engaged, make a thorough inspection of each penitentiary at least once per month, and of each convict camp twice per year, and oftener if practicable. He shall carefully examine into any and all complaints, whether made by officers, under-officers, lessees, convicts or citizens, and, unless any complaint is found to be groundless, he shall take such action as may be necessary to correct and prevent a recurrence of the same. When it is found that any assistant superintendent, inspector, chaplain, physician or lessee has been guilty of any serious official or other improper conduct, he shall report the facts thereof to the governor and penitentiary board for their action. Any officer of the penitentiary, under-officer, lessee or convict has a right, and it shall be his duty to report to the governor any official misconduct of the superintendent, or any cause of complaint whatever against him.

Shall have power to administer oaths, etc.
Ib. §13.

Art. 3665. The superintendent, in the discharge of his duties, is authorized to administer oaths, to summon and examine witnesses, and to take such other steps as he may deem necessary to ascertain the truth in respect to any matter about which he has the right to inquire. He shall examine and audit all accounts connected with the penitentiary in which the state is sought to be charged, and administer oaths to all parties presenting claims, and, to authenticate his acts, may use the seal of either penitentiary; provided, he shall not approve any claim for the transportation of convicts to the penitentiary unless the same be sworn to and accompanied by the proper commitment papers, and unless satisfied that all the prerequisites of the law have been complied with.

Monthly reports.
Ib. §14.

Art. 3666. He shall make a monthly report to the governor, as president of the penitentiary board, showing fully the condition and treatment of the convicts, and the changes in the prison population during the month. He shall at the time furnish to the governor, to the comptroller and to the lessees a statement showing the amount due the state on account of the leasing of the penitentiaries or hire of convict labor. He shall, from time to time, make such suggestions to the penitentiary board as he may deem advisable relative to any improvements or changes in the plans of the penitentiaries or management. It shall be his duty, on or before the first day of November next preceding the regular session of the legislature, to make a report to the governor, as president of the penitentiary board, in regard to the government, discipline, condition and management of the penitentiaries and convicts, showing the changes in prison population, the places where convicts are employed and occupations in which engaged, their moral, intellectual and physical condition, and such other matters as may seem pertinent or as may be required by the rules, the governor or penitentiary board.

Shall keep a record.
Ib. §15.

Art. 3667. The superintendent shall keep the records of all matters pertaining to the penitentiaries generally, and shall keep a register of all convicts belonging to the penitentiaries, whether within or without the walls of the penitentiaries, showing the registered number and name of each convict, giving aliases, if any, age, height, complexion, color of hair and eyes, marks on person, sex, nativity, residence, county where convicted, date of sentence, date of receipt, previous occupation and habits, if known. He shall keep, as far as practicable, a record of the general condition and conduct of each convict, noting all punishments, forfeitures for bad conduct, changes

and incidents of importance that may occur during his confinement, and to the end that full and correct records may be kept, he may require from all officers such monthly and other reports as he may deem proper. He shall issue discharges to such convicts as are entitled thereto by expiration of term or otherwise. During the absence of the superintendent from his office he may designate some proper person to perform his clerical duties.

ASSISTANT SUPERINTENDENT.

Art. 3668. The governor shall appoint, by and with the advice and consent of the senate, an assistant superintendent for each penitentiary now or hereafter to be established or organized, 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 office the same to be filled by executive appointment for the unexpired term; provided, that the governor shall make no appointment to said office until such time as the penitentiary board may deem that there is a necessity therefor.

Assistant superintendent, qualifications, etc.
Ib. §17.

Art. 3669. The assistant superintendent shall have the immediate supervision and control over the penitentiary for which he is appointed, and over all convicts confined therein, and over all officers, overseers and guards and employes connected therewith. He shall be responsible for the discipline of the prison, and the manner in which it is enforced. He shall appoint the under-officers, overseers and guards of the prison, subject to the approval of the superintendent, and may remove the same; provided, that when the penitentiary is leased his control shall not extend to the labor of the convicts, except as herein prescribed; nor shall he exercise his power of appointment when the terms of the lease require the lessees to appoint, though he may discharge any under-officer or employe for misconduct or failure to perform duty.

Duties and powers.
Ib. §18.

Art. 3670. An assistant superintendent shall have such powers as are necessary to a proper discharge of his duties, subject only to the law and the instructions of the superintendent and the penitentiary board. He shall, if practicable, 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 superintendent or governor. During his absence the under-keeper shall act in his stead.

Powers.
Ib. §19.

Art. 3671. The assistant superintendent shall visit frequently the prison hospital, the cells, shops and other places in and near the penitentiary where the convicts may be, and shall see that they are humanely and properly treated, and shall give prompt attention to all complaints made by a convict in regard to his health, general condition, treatment, or against any officer, employe or lessee of the penitentiary; he shall see that the convicts are properly clothed, fed and taken care of in sickness and health; that the prison buildings, cells, shops and premises are kept in a neat, clean and healthy condition, and he shall frequently at suitable times converse in a kindly manner with the convicts under his charge, and use his best endeavors to produce in them a spirit of reformation.

Shall make visits, etc.,
Ib. §20.

Art. 3672. The assistant superintendent shall keep the records of the penitentiary of which he has charge, similar to those heretofore required to be kept by the superintendent. He shall keep a record of the conduct of each convict under his charge; noting all

Shall keep records.
Ib. §21.

punishments and charges of misconduct. He shall, on the first of each month, make a report to the superintendent, on blanks to be furnished him, the number, names and description of all new convicts received by him during the preceding month, with other changes in prison population; the names of those who have been sick, and the names of those punished, or whose conduct has been bad. He shall make such other reports as required by the rules, the superintendent or the governor. He shall make such biennial reports as may be required to the superintendent, to be forwarded by him to the governor.

Shall receive convicts, etc. *Ib.* §22.

Art. 3673. He shall receive and receipt for all convicts that may be brought to the penitentiary, in accordance with law. He shall examine and pass upon all accounts connected with the penitentiary under his charge, before submitting them to the superintendent for his approval. He must require all accounts to be sworn to; and he is authorized to administer oaths in all matters connected with the penitentiary and its management, and to all parties presenting claims as above mentioned, and for this purpose he shall be provided with a seal of office, whereon shall be engraved in the center a star of five points, and the words "State Penitentiary,——, Texas," around the margin, the blank to be filled with the name of the place where the penitentiary is located, with which seal he shall authenticate all his official acts.

General duties. *Ib.* §23.

Art. 3674. He shall perform such other duties as may at any time be prescribed by the rules of the penitentiary board.

CHAPTER THREE.

INSPECTORS AND THEIR DUTIES.

Article	Article
Term of office, etc.....3675	Shall have power to make examinations, etc.3678
Duties and powers.....3676	Shall report to superintendent.....3679
Shall visit camp, etc.....3677	May remove under-officers.....3680

Term of office. (Acts of 1881, p. 38, §24.)

Article 3675. The governor shall appoint, by and with the advice and consent of the senate when in session, two officers, to be styled "inspectors of penitentiaries," who shall hold office for the term of two years, and until the appointment and qualification of their successors; provided, that one or both the inspectors, who may at any time be appointed, may be discontinued when, in the opinion of the penitentiary board, the duties required are not sufficient to require the services of one or both of them.

Duties and powers. *Ib.* §25.

Art. 3676. Inspectors have the immediate supervision of convicts and officers in charge of them at camps and other places outside the walls of the penitentiaries. It shall be the duty of the superintendent, with the assistance of the inspectors, to divide the convict camps, or places where convicts may be employed outside the walls, into two divisions, and assign one inspector to each division, but they may exchange work or divisions with each other at pleasure.

Shall visit camps, etc. *Ib.* §26.

Art. 3677. The superintendent shall, from time to time, furnish the inspectors with a list of the convicts in each force in their respective divisions. Each inspector shall visit, at least once in each month, or oftener if required by the superintendent or penitentiary board, each convict camp or place of employment. He shall see that the convicts charged to each force are on hand, and if not, he

must inquire and report the cause of absence. When a convict has died, he shall investigate into the cause of his death and what nursing and medical attention were given him when sick. If a convict has escaped, he shall investigate fully, so as to fix the blame, if any, where it properly belongs. He shall make strict inquiry as to the treatment of convicts at outside camps, and as to whether the law and the rules are substantially complied with in their guarding, clothing, feeding and work; also as to whether the prison is secure, comfortable and kept clean. He shall specially notice the punishments inflicted, and whether legal and necessary.

Art. 3678. The inspection of each camp or force shall be thorough and searching, and the inspector shall examine into all complaints preferred by a convict, officer or others, and if there be any ground for complaint he shall take immediate measures for the correction of the abuse. For this purpose, and any other connected with the management of outside convict forces, he is authorized to administer oaths, summons and examine witnesses, and take such other steps as he may deem necessary, to ascertain the truth. In case of illegal punishment, cruelty or abuse of a convict by any person, he may take such action as may be proper and necessary to bring the offender to justice.

Shall have power to make thorough examinations, etc. Ib. §27.

Art. 3679. The inspector shall report to the superintendent once in each month, showing the management, condition, discipline and treatment of convicts in his division; how they have been fed and clothed during the month, and shall report the names and number of convicts who have escaped or died, the number sick, illegal punishments and abuses, and all other matters about which he has a right to inquire. They shall make such other reports as may be required.

Shall report to superintendent. Ib. §28.

Art. 3680. The inspector has the right to remove any under-officer in charge of convicts in his division for incompetency, violation of law or failure to discharge his duty, and the authority herein given to inspectors shall be exercised in conformity with law, and such regulations as may be established by the penitentiary board, and then only in correcting abuses and removing complaints, where convicts are employed outside the prison walls.

May remove under-officer. Ib. §29.

CHAPTER FOUR.

THE PHYSICIAN AND HIS DUTIES.

	Article		Article
Term of office.....	3681	Sick convict not to be discharged, except.....	3685
Duties.....	3682	Sanitary regulations.....	3686
Shall advise when to remove sick convicts.....	3683	Shall keep a journal, etc.....	3687
Nurses.....	3684	Shall make reports.....	3688

Article 3681. The penitentiary board shall appoint for each penitentiary, when organized, a physician, who shall hold his office for two years, unless sooner removed by said board, and perform such duties as may be required by the board in addition thereto.

Term of office. Ib. §32.

Art. 3682. The physician shall visit the penitentiary daily, and as much oftener as may be necessary, for the purpose of ascertaining the health of the convicts and giving proper medical attention to such as may require it. He shall attend immediately upon any case of sickness in the prison, when notified thereof, and he shall

Duties. Ib. §33.

when required examine any convict as to his physical ability to perform work at which it is proposed to place him, and report the result to the assistant superintendent.

Shall advise when to remove convicts. Ib. §34.

Art. 3683. He shall notify the assistant superintendent when, on account of ill health, it may be deemed advisable to remove a convict from the penitentiary to some healthier locality, and he shall cause any convict with a contagious or infectious disease to be removed to some place to prevent the spread of such disease.

Nurses. Ib. §35.

Art. 3684. Nurses may be employed by the physician with the approval of the assistant superintendent in serious cases of sickness or epidemics.

Sick convicts shall not be discharged, except. Ib. §36.

Art. 3685. A convict afflicted with serious illness or dangerous disease shall not in such condition be discharged from the penitentiary, except upon his own request, although his time of imprisonment may have expired.

Sanitary regulations. Ib. §37.

Art. 3686. The physician is specially charged with the sanitary regulations of the penitentiary, and shall make frequent inspections and use all precautions to keep the prison healthy and prevent the introduction and spread of epidemic or contagious diseases.

Shall keep a journal. Ib. §38.

Art. 3687. The physician shall keep a journal in which he shall enter the name of each convict treated by him or under his direction, noting duration of sickness, disease, treatment, date of discharge from hospital or treatment, with such other entries as he may deem important, which journal shall at all times be open to the inspection of the assistant superintendent and the superintendent.

Shall make reports. Ib. §39.

Art. 3688. He shall make such reports as required by the governor, penitentiary board or superintendent. He shall make a biennial report to accompany that of the assistant superintendent, in which he shall state the number of cases of sickness during the two preceding years, diseases, number of deaths and diseases with which they died, the number and character of surgical operations performed, and such suggestions as he may deem important to the improvement of the sanitary condition of the prison; also any facts or incidents that he may deem of general interest or of benefit to science.

CHAPTER FIVE.

THE CHAPLAIN AND HIS DUTIES.

	Article	Article
Term of office.....	3689	3692
Duties	3690	3693
Shall visit convicts.....	3691	3694

Term of office. Ib. §40.

Article 3689. The penitentiary board shall appoint a chaplain for each penitentiary, when organized, who shall hold his office for two years, unless sooner removed by them.

Duties. Ib. §41.

Art. 3690. The chaplain shall preach at least once every Sunday to the convicts, and shall establish such associations, Sabbath schools and other schools for the benefit of the convicts as he may deem proper, having due regard to the rules of the prison, and being careful not to conflict in any manner with the discipline of the prison and the regular hours for labor.

Shall visit convicts, etc. Ib. §42.

Art. 3691. He may, at convenient times, visit convicts during their hours of license, during week days, and also in the hospital and at their cells, and administer to all such advice and consolation as he

may deem best calculated to promote reformation. He must at all times impress upon them the necessity of a strict compliance with prison rules. He must use his best endeavors on all occasions to inculcate in them sound principles of religion and morality, but he shall not, in his conversations or discourses, discuss doctrines merely sectarian, but shall teach such principles of religion and morality as are common to all Christian churches.

Art. 3692. By permission of physician he may visit sick convicts, and shall always be admitted to the bedside of any convict in a dying condition. May visit the sick. Ib. §43.

Art. 3693. Preachers, ministers and priests of all religious denominations shall, by the consent of the superintendent, assistant superintendent or chaplain, have access to the penitentiaries, and may at any reasonable time be allowed to preach to the convicts. A convict shall at all proper times be permitted to receive visits from and hold converse with any preacher, minister or priest he may desire to see. All denominations to have access. Ib. §44.

Art. 3694. The chaplain shall be ex officio librarian of the penitentiary, and perform such other duties not herein prescribed as the rules may require. Ex officio librarian. Ib. §45.

CHAPTER SIX.

UNDER-OFFICERS AND EMPLOYES.

	Article		Article
Appointed by assistant superintendent.....	3695	Skilled workmen to be employed, when.....	3697
Duties	3696	Compensation to under-officers.....	3698

Article 3695. The assistant superintendent of each penitentiary shall appoint, with the approval of the superintendent, such number of under-officers as may be necessary to preserve discipline and prevent escapes; provided, no person under twenty-one years of age shall be employed as a guard. Under-officers appointed by assistant superintendent. Ib. §46.

Art. 3696. All under-officers and employes shall be subject to the orders of the assistant 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 superintendent, who shall inquire into the same and take such action as the facts may seem to demand. Duties. Ib. §47.

Art. 3697. When the penitentiaries are being operated on state account, the superintendent, under the direction of the state board, may employ such number of skilled workmen or other employes as may be deemed essential to their successful operation and to the pecuniary interest of the state. Skilled workmen to be employed, when. Ib. §48.

Art. 3698. Under-officers and employes shall receive such compensation for their services as the penitentiary board may prescribe, to be paid in such manner as may be prescribed by the board. Compensation to under-officers. Ib. §49.

CHAPTER SEVEN.

FINANCIAL AGENT.

	Article		Article
Appointment and term of office.....	3699	Account with each industry.....	3706
Bond and salary.....	3700	Shall have control of property.....	3707
Duties	3701	Shall consult with superintendent.....	3708
Itemized monthly statements.....	3702	Make contracts for hire of.....	3709
Shall keep accounts.....	3703	Biennial reports.....	3710
Shall make what purchases.....	3704	Suits to be brought in his name.....	3711
What accounts to be kept.....	3705		

Appointment and term of office.
(Acts of 1891, p. 102, §68.)

Article 3699. The governor shall appoint, with the advice and consent of the senate, a financial agent of the penitentiaries, who shall hold his office for two years and until the appointment and qualification of his successor, and in case of a vacancy in said office the same shall be filled by executive appointment for the unexpired term.

Bond and salary.
Ib. §69.

Art. 3700. Before entering upon the discharge of his official duties, the financial agent shall give bond in the sum of seventy-five thousand dollars, with two or more good and sufficient sureties, payable to the governor and his successors in office, conditioned upon the faithful performance of the duties of his office, the same to be approved by the penitentiary board and the governor, and filed in the office of the secretary of state. The said financial agent shall receive for his services the sum of three thousand dollars per annum and actual necessary traveling expenses in the discharge of his official duties. He shall keep his office at such place as may be directed by the penitentiary board.

Duties.
Ib. §70.

Art. 3701. The financial agent shall be the purchasing, selling and disbursing agent of the penitentiaries. He shall receive all moneys, the proceeds of convict labor from sales of manufactured goods, crops or other property belonging to the penitentiaries. And in such capacity shall, with the approval of the penitentiary board, have the power and authority to buy and sell for account of the penitentiaries for cash or upon a credit, as his judgment may approve and as may be to the best interests of said penitentiaries. He shall from time to time receive all moneys appropriated for the use of penitentiaries or either of them, and on his requisition, approved by the penitentiary board, the comptroller of public accounts is authorized to draw his warrant in favor of the said financial agent on the state treasurer for the same; provided, the said financial agent shall at no time retain in his possession nor on deposit outside of the state treasury any sum of money greater than one-half of his official bond.

Itemized monthly statements to be made.
Ib. §71.

Art. 3702. He shall furnish monthly an itemized statement of all the receipts from whatever source, and of all disbursements on account of the penitentiary management, accompanied by abstracts, cash statements, invoices, receipted vouchers, and such other data as may be required and necessary to make a full, clear and correct showing of penitentiary finances at the end of each month for which made, which said statement, after being examined and approved by the superintendent of penitentiaries, and then by the penitentiary board, shall be filed, together with the abstracts, invoices and receipted vouchers, with the comptroller of public accounts, for his examination, approval and entry.

Shall keep accounts.
Ib. §72.

Art. 3703. He shall keep correct and accurate accounts with all parties hiring convict labor either inside or outside of the walls of

the penitentiary, and shall collect and receipt for all sums of money due on account of sales of goods manufactured, hire of convict labor, or for work performed by convicts either inside or outside of the walls of the penitentiaries.

Art. 3704. He shall purchase and pay for all such material as may be necessary for building or manufacturing purposes, and all supplies of provisions, clothing, bedding, shoes, medicines, and all other articles required by the rules and regulations of the penitentiaries, for the use of the prison officials, employes, sergeants, guards and convicts, and when not otherwise provided by law, he shall pay the monthly salaries of all the penitentiary officers, employes, sergeants and guards, and shall pay all accounts for services rendered and purchases made for the use of said penitentiaries or either of them.

Shall make what purchases.
Ib. §73.

Art. 3705. He shall keep an account of each and every article sold, with price for which same was sold; also an account specifying the amounts of money received by him and from whom, and on what account, together with an account of his disbursements of the same; all of which shall be by him entered in well-bound books, which he shall keep subject to the inspection of the penitentiary board or the superintendent of penitentiaries, or either of them, or any citizen of this state.

What accounts must be kept.
Ib. §74.

Art. 3706. He shall take such measures as are necessary to keep a debit and credit account with each separate industry carried on at each penitentiary, debiting each industry with salary of foreman, with labor and material used, and crediting it with the work turned out. An account shall also be kept for every department of the prisons, whether productive or nonproductive, showing the cost of labor and supplies; also an account showing labor and material used for all improvements and repairs about the penitentiaries or to the penitentiary property. And in order to keep these accounts a valuation shall be fixed upon the labor of the convicts employed in every capacity, and such accounts shall be made up from weekly statements to be furnished by the assistant superintendents and foremen. A strict account shall also be kept with each separate convict force on the outside, showing receipts and debiting each force with cost of supplies of each, description, cost of guarding, feeding, clothing, medical attention, transportation to and from, etc.

Accounts with each separate industry.
Ib. §75.

Art. 3707. He shall have charge and custody of all property, supplies, provisions, medicines, clothing, bedding, shoes, etc., purchased or manufactured for use of the penitentiaries, and shall issue the same to the prisons proper on requisitions approved by the assistant superintendent, and to the outside camps on the requisitions of the sergeants in charge, approved by the superintendent of penitentiaries.

Shall have custody of property.
Ib. §76.

Art. 3708. He shall in the purchase of all provisions and other supplies for the prison proper or the outside camps consult with the superintendent of penitentiaries, and endeavor to bring all the competition possible to bear, so as to make his purchases at the very lowest cash prices.

Shall consult with superintendent, when.
Ib. §77.

Art. 3709. He shall, in conjunction with the superintendent of penitentiaries, under such regulations as the penitentiary board may prescribe, make all contracts for the hire of convict labor, either outside or inside the walls of the penitentiaries, or on share farms, should convicts be worked under the contract system. (But all convicts shall be placed within the walls of the penitentiaries or on

Make contracts for hire of convict labor, with, etc.
Ib. §78.

state farms and worked on state account as soon and speedily as possible.) Also for work to be done with convict labor. He shall be allowed such clerical help as the penitentiary board shall from time to time deem necessary to enable him to properly discharge the duties incumbent upon him.

Biennial abstracts of his reports to be made.
Ib. §79.

Art. 3710. He shall biennially, on the first day of November, furnish the penitentiary board with an abstract of his receipts, disbursements, sales and purchases for the preceding two years, together with such other information relating to the financial transactions of the penitentiaries as the penitentiary board shall require at his hands, which shall be made a part of the biennial penitentiary report.

Suits to be brought in his name.
Ib. §80.

Art. 3711. Suits for the recovery of moneys due on account of sales or otherwise, belonging to the Texas state penitentiaries, or either of them, or for property of any description belonging to said penitentiaries, or either of them, shall be brought in the name of the financial agent of the Texas state penitentiaries for the use of the Texas state penitentiaries, or either of them, as the case may be.

CHAPTER EIGHT.

GENERAL PROVISIONS.

<p>Objects of the law.....3712 How treated3713 Punishment inside penitentiary.....3714 Clothing and food.....3715 Regulations as to work.....3716 Convicts to be removed, when.....3717 To be searched when received.....3718 Sexes to be kept separately.....3719</p>	<p>Article</p>	<p>Article</p> <p>The dead to be decently buried.....3720 May receive instruction, etc.....3721 Discharge, how regulated.....3722 Who admitted to visit penitentiary.....3723 Others, when3724 Superintendent may offer reward, when.....3725 Bonds of officers.....3726</p>
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Objects of the law.
(Acts of 1881,
p. 46, §50.

Article 3712. The various provisions of this title are designed to secure to the convicts humane treatment, suitable moral instruction, to provide for their health, and to extend to them such comforts and privileges as may be consistent with their situation, and at the same time to require of them a due attention to their various duties and a strict observance of the discipline, rules and regulations of the prison.

Treated with humanity, etc.
Ib. §51.

Art. 3713. The convicts shall all be treated with humanity, but a distinction may be made in their treatment so as to extend to all such as are orderly, industrious and obedient, comforts and privileges according to their deserts. The rewards to be bestowed on convicts for good conduct shall consist of a relaxation of strict prison rules, and extension of social privileges as may not be inconsistent with proper discipline. Commutation of time for good conduct shall be granted by the superintendent of the penitentiaries, and the following deductions shall be made from the term or terms of sentence when no charges of misconduct have been sustained against a convict, viz.: Two days per month off the first year of sentence. Three days per month off the second year of sentence. Four days per month off the third year of sentence. Five days per month off the fourth year of sentence. Six days per month off the fifth year of sentence. Seven days per month off the sixth year of sentence. Eight days per month off the seventh year of sentence. Nine days per month off the eighth year of sentence. Ten days per month off the ninth year of sentence. Fifteen days per month off the tenth year and all succeeding years of sentence. A convict under two or

Commutation of sentence, when.

more cumulative sentences shall be allowed commutation as if they were all one sentence. For each sustained charge of misconduct in any year of the term the commutation allowed for one month of such year may be forfeited, and for any sustained charge of escape or attempt to escape, mutinous conduct or other serious misconduct, all the commutation which shall have accrued in favor of the convict up to that date shall be forfeited, unless in case of escape the convict voluntarily returns to prison without expense to the state, such forfeiture may be set aside. For extra meritorious conduct on the part of any convict he shall be recommended to the favorable consideration of the governor for increased commutation or pardon. Life or long term convicts, who, having actually served fifteen years without any sustained charge of misconduct, and who shall be favorably recommended to the governor by the superintendent and assistant superintendent of penitentiaries, and the penitentiary board, may receive at the hands of the governor a reasonable commutation of sentence, and if a life sentence is commuted to a term of years, then such convict shall have the benefit of the ordinary commutation as if originally sentenced for a term of years, except the governor should otherwise direct.

Art. 3714. The punishments that may be prescribed by the penitentiary board shall consist of deprivation of privileges, closer imprisonment, confinement in cell on bread and water, confinement in dark cell, confinement in irons and other punishments of like character; but a convict shall not be deprived of his food at regular hours, except as above provided. Whipping may be resorted to upon a special order in writing from the superintendent or assistant superintendent or inspector, in aggravated and particular cases, and under such rules and instructions as may be prescribed in the rules. A convict's head shall not be shaved in any instance; nor shall stocks or "horse" be used under any circumstances.

Punishments inside the penitentiary. (Acts of 1881, p. 46.)
Ib. §52.

Art. 3715. Suitable clothing, of substantial material, and uniform make, and sufficient food of wholesome quality shall be furnished to all, and in order that all convicts be fed alike, as near as practicable, the rules shall prescribe the kind, quality and variety of food to be furnished. Convicts are to be allowed no spirituous, vinous or malt liquors, except upon prescription of the physician.

Clothing and food.
Ib. §53.

Art. 3716. Convicts sentenced to hard labor shall be kept at work, under such rules and regulations as may be adopted; but no labor shall be required of any convict on Sunday, except such as is absolutely necessary, and no greater amount of labor shall be required of any convict than a due regard for his physical health and strength may render proper; nor shall any convict be placed at such labor as the penitentiary physician may pronounce him physically unable to perform.

Regulations as to work.
Ib. §54.

Art. 3717. Convicts who have been reported by the physician, inspector or other officer in charge as in a condition of health which requires their removal to some other place, shall be accordingly promptly removed, but under such regulations and in such manner as will prevent escape.

Convicts to be removed, when.
Ib. §55.

Art. 3718. Convicts when received into the penitentiary shall be carefully searched. If money be found on the person of a convict, or received by him at any time, it shall be taken charge of by the assistant superintendent and placed to the convict's credit, and expended by him for the convict's benefit on his written order, and under such restrictions as may be prescribed by the rules. Any

To be searched when received, etc.
Ib. §56.

officer who, having charge of a convict's money, misappropriates the same, or any part thereof, or who seeks to speculate on such convict, shall be removed from office.

Sexes to be kept separate.
Ib. §57.

Art. 3719. Convicts of different sexes shall be kept separate and apart. If a female convict be received with an infant child, or if any child shall be born in the penitentiary, the child shall be permitted to remain with its mother until four years of age, when it shall be provided for as may be prescribed by the penitentiary board.

The dead to be decently buried.
Ib. §58.

Art. 3720. It shall be the duty of the assistant superintendent, inspector or other officer in charge of a penitentiary, division or convict camp or force to have all convicts who may die while in custody decently buried, and each grave marked by a board with the name of convict, date of death, age if known, and county whence sentenced, inscribed thereon.

May receive instruction.
Ib. §59.

Art. 3721. Convicts who are unable to read or write may receive instruction under such regulations as may be prescribed by the penitentiary board; and the said board may, whenever practicable to do so, employ a competent teacher for that purpose.

Discharge, how regulated.
Ib. §60.

Art. 3722. When a convict is entitled to his discharge from prison he shall be furnished with a written or printed discharge from the superintendent of penitentiaries, with seal affixed, giving convict's name, date of sentence, from what county, amount of commutation received, if any, and such other description as may be practicable. He shall be furnished with a plain suit of citizen's clothing, five dollars in money and railroad transportation to the nearest depot to county seat from whence sentenced, not to exceed fifteen dollars; but if convict prefers he may receive transportation tickets for same distance in some other direction.

VISITS TO THE PENITENTIARIES.

Who permitted to visit penitentiary.
Ib. §66.

Art. 3723. The governor and all other members of the executive and judicial departments of the government, and members of the legislature, shall be admitted into the penitentiaries at all proper hours, for the purpose of observing the conduct and operations thereof, and may hold conversations with the convicts apart from any of the prison officers.

Others, when.
Ib. §67.

Art. 3724. Other persons may visit the penitentiaries under such rules and restrictions as may be established.

Superintendent may offer rewards.
(Acts of 1881, p. 50.)

Art. 3725. The superintendent, with the governor's approval, may offer such reward for the apprehension of an escaped convict, not exceeding one hundred dollars, exclusive of expenses of delivery, as may be fixed by the penitentiary board, and to be paid as directed by the said board, the reward and expenses from either the penitentiary lease fund or from the appropriation for the arrest of a fugitive from justice.

Bond of superintendent.
(Acts of 1891, p. 104, §82.)

Art. 3726. The superintendent of penitentiaries shall give bond in the sum of twenty-five thousand dollars, with two or more good and sufficient sureties, payable to the governor and his successors in office, conditioned upon the faithful performance of the duties of his office, the same to be approved by the penitentiary board and the governor and filed in the office of the secretary of state. The

Bond of other officers.

penitentiary board shall require the assistant superintendents and sergeants to give bond, payable to the superintendent of penitentiaries, conditioned upon the faithful performance of their duty, with two or more good and sufficient sureties, in such amount and with such conditions as it may deem proper. Said bond to be approved by said board and filed with the superintendent of penitentiaries.

CHAPTER NINE.

OF WORKHOUSES AND COUNTY CONVICTS.

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Overseers and guards..... 3732	Mechanic, etc., to have extra credit... 3740
To labor upon public works, etc..... 3733	Convicts to be guarded..... 3741
Where confined when off duty..... 3734	Costs to be paid officers..... 3742
	Convict may commute his labor..... 3743

Commissioners' courts to establish workhouses, etc.
 (Const., art. 16, §3.)
 (Act Aug. 21, 1876, p. 9, §229.)
 (Act to adopt and establish R. C. S., passed Feb. 21, 1879.)

Article 3727. [3585] The commissioners' courts of the several counties may provide for the erection of a workhouse 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. 3728. [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. 3729. [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. 3730. [3588] County workhouses 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. 3731. [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. 3732. [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. p. 228, §1.

Art. 3733. [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 workhouse 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. 3734. [3592] When not at labor, county convicts may be confined in the county jail or workhouse, as may be most convenient, or as the regulations of the commissioners' court may prescribe.

Refractory convicts to be punished.

Art. 3735. [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. 3736. [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 workhouse, or when hired out as is hereinafter provided.

Aged or disabled convicts not to work.

Art. 3737. [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. 3738. [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.

How to be credited on fine, etc. (Acts of 1889, p. 14.)

Art. 3739. 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 fifty cents for each day he may labor, and upon satisfaction of such fine and costs in full at said rate he shall be discharged; provided, such work shall be performed on public streets or roads, or on county poor farms. No convict under this chapter shall ever be required to work or be hired for more than one year.

Mechanic, etc., to have extra credit. Ib. §2.

Art. 3740. [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 workhouse 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.

Convicts to be guarded, etc. (Act of 1876, p. 280, §11.)

Art. 3741. [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.

Costs to be officers. Ib. p. 229, §8; amend. 1895, p. 179.

Art. 3742. [3600] Whenever a convict who has been committed to jail in default of payment of fine and costs adjudged against him, has satisfied such fine and costs in full by labor in the workhouse, on the county farm, on the public roads of the county or upon any public works of the county, said county in which said conviction was had shall be liable to each officer and witness having costs in the case against said convict for only one-half of such costs, and the county judge of said county shall issue his warrant upon the county treasurer in favor of each officer and witness for one-half of all such legal costs as may have been taxed up against said convict, not to include commissions, and the same shall be paid out of the road and bridge fund of the county or out of any other county funds not otherwise appropriated.

Convict may commute his labor.

Art. 3743. [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 workhouse 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.

CHAPTER TEN.

OF HIRING COUNTY CONVICTS.

Article	Article
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Hirer shall give bond, and its requisites.3746	Record in relation to county convicts... 3750
Liability when convict escapes.....3747	Officers' costs, how paid..... 3751

Article 3744. 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 worked upon the public roads or upon the county farms of the county in which such conviction is had, or be hired out to any individual, company or corporation within the county of conviction, to remain in said county, and the proceeds of said hiring, when collected, shall be applied, first, to the payment of the costs, and second, to the payment of the fine; and every convict shall be entitled to a credit of twenty-five cents on his fine and costs for each day he may serve under such hiring, including Sunday, and he shall be discharged at any time upon payment of the balance due on his fine and costs or upon the expiration of his term of service, his term of service in no event to be greater than one day for each fifty cents of fine and costs; provided, that in no case shall the counties be responsible to the officers for their costs, and in no case shall such convicts be hired out for a longer period than one year for failure to pay a fine and costs, and on the expiration of said time, unless by his hire such fine and costs have been sooner paid off, said convicts shall be finally discharged.

Convicts may be hired out. (Acts of 1837, p. 11.)

Art. 3745. [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. 3746. [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. Id. 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.

Liability of
hirer when
convict
escapes.
Ib. p. 229,
§4.

Art. 3747. [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 rearrested 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.

Suit on bond.
Ib. §5.
(Const., art.
16, §24.)

Art. 3748. [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 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. 3749. [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 re-
lation to con-
victs shall be
kept.
(Act Aug. 21,
1876, p. 230,
§15.)

Art. 3750. [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. 3751. [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 LXXX.

Pensions.

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Proceedings to be filed with comptroller.....3755	Attorney's fees.....3760
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Article 3752. To every surviving indigent soldier or indigent volunteer who was in the actual military or naval service of Texas at the time of the siege of Bexar, in December, 1835, or at the time of the battle of San Jacinto, in April, 1836, or who actually participated in any battle in Texas in 1836, or who was in such actual military service for as much as six weeks between the commencement of the revolution at Gonzales in 1835, and the first day of January, 1837, and to every indigent surviving signer of the declaration of independence of Texas, and to every indigent surviving widow of any such soldier, volunteer or signer, who is and has always been unmarried since the death of such soldier, volunteer or signer, and so long as such widow may remain unmarried, there shall be and is hereby granted an annual pension of one hundred and fifty dollars as hereinafter provided.

To whom
granted.
(Acts of 1839,
p. 43, §1.)

Art. 3753. Each applicant for a pension under this law shall make application in writing for the same to the county judge of the county of his or her residence, and shall post a copy of such application on the court house door of the county for at least thirty days before the application is acted on by the county judge. Such application shall state the name, age and residence of the applicant, whether or not this applicant received any pension or veteran donation land certificate under any previous law, a list of the real and personal property owned by the applicant, and the present value of the same, and what property and the value thereof that such applicant has sold or conveyed within twelve months prior to the date of such application; and shall further state that the applicant is in indigent circumstances, and is dependent upon his or her labor or on the charity of others for a support; provided, that the word "indigent," within the meaning of this law, shall not allow the ownership of property to exceed one thousand dollars; and that the applicant has not transferred to others any property or values of any kind for the purpose of becoming a beneficiary under this law; and still further, that such applicant is and was for one year preceding the date of the passage of this law a bona fide resident citizen of this state. And in addition to the foregoing each male applicant shall further state the time he rendered such service and the command he served in; and each female applicant shall state the name of her deceased husband, the date of his death; that she is unmarried, and has so remained since the death of the husband for whose services she claims a pension; and shall further state, as accurately as she can, the time her said deceased husband rendered such service and the command he

Application.
ib. §2.

served in. Should the applicant be a signer of such declaration of independence, or a widow of such signer, he or she shall state all that is hereinbefore required, except as to the military service, and in lieu of which it shall state that the applicant was a signer of such declaration of independence, or is the widow of such signer, which application shall be subscribed and sworn to by the applicant, and the same shall be supported by affidavits of at least two credible witnesses who reside in the state, and shall show that the facts stated by the applicant is known and regarded in his or her neighborhood as a Texas veteran or signer of the declaration of independence, or the widow of a Texas veteran or signer of the declaration of independence. Any veteran whose application and proof heretofore made to the comptroller are in compliance with the requirements of this law shall be entitled to his or her pension on presenting such application and proof to the comptroller, without further proof being made; and where such application and proof has been returned to the applicant by the comptroller, said applicant may re-file the same as if made under this law; provided, that such application has not heretofore been declared fraudulent.

Proceedings
to obtain.
(Acts of 1885,
p. 94, §3.)

Art. 3754. Such application so signed and sworn to by the applicant and two credible witnesses shall be presented to the county judge, who shall in open court, at a regular term thereof; hear evidence as to the truth of the statements made in such application; and if he believe from the evidence that the applicant really performed the service for which the pension is claimed, or is a widow of a soldier or volunteer of the Texas revolution, or a signer of the declaration of Texas independence; that he or she is now, and was at the time of the passage of this law, and for ten years previous thereto, a bona fide resident of the state of Texas; that the applicant is in indigent circumstances, and is dependent on his or her labor or on the charity of others for a support, and has not at any time transferred any property for the purpose of becoming a beneficiary under this law; then he shall make his certificate under the seal of his office, attested by the county clerk, reciting the facts as shown by the evidence. Upon the hearing of such application the state shall be represented by the county or district attorney, and it shall be the duty of such attorney to summon witnesses to testify in behalf of the state who know the pecuniary condition of the applicant, or any other facts affecting the rights of the applicant to obtain a pension, and to examine the assessor's rolls and the records of his county, and any other source of information which may seem to him advisable; and he shall prepare a statement of the testimony given by each witness, including the name of such witness, and also of the facts disclosed by investigating any other source of information, which statements shall be approved by the county judge. For his services in behalf of the state the attorney shall be allowed a fee of ten dollars, to be paid as follows: He shall present his account for the same to the county judge, who shall approve it if he find it correct, shall date and sign the same officially, and shall cause it to be filed in the office of the county clerk. The said judge shall thereupon give the attorney a draft upon the county treasurer, and the same when presented to the treasurer shall be paid out of any moneys in his hands not otherwise legally appropriated, in the same manner as jury certificates are paid; provided, that if the applicant shall be proved not to be an indigent, and shall have his application defeated on that ground, then the attorney representing the state shall be entitled to

an additional fee of ten dollars, to be taxed against the applicant as costs of suit.

Art. 3755. Such application so prepared and certified to, together with the statements of the county judge and attorney hereinbefore provided for, shall be filed with the comptroller of public accounts, whose duty it shall be to examine critically such application and statements, and any other accessible evidence that may prove or disprove the right of the applicant to claim a pension, and may require further proof of the statements made in such application, and if in his opinion the applicant has not established his or her legal right to a pension, then he shall refuse such application and file reasons therefor in his office; provided, no pension shall be granted to any one under this title whose claim has been rejected by the veteran board of this state as fraudulent.

To be filed with comptroller. (Acts of 1885, p. 94, §4.)

Art. 3756. No person shall be entitled to receive a pension under this title unless it shall be made to appear to the comptroller, from the evidence, that said person is in indigent circumstances, and is dependent upon his labor or the charity of others for a support.

Must be indigent. Ib. §5.

Art. 3757. The pension herein provided for shall begin at the date when the comptroller receives the application, and shall be paid quarterly in advance. The comptroller shall draw his warrant for the same on the treasurer, and upon presentation the treasurer shall pay the same out of any money in the treasury which may be appropriated for this purpose.

Shall commence, when. Ib. §6.

Art. 3758. On or after the first of each quarter the pensioner shall make his affidavit stating the county of his residence, and that he is the identical person to whom a pension has been granted under this law, which affidavit shall be supported by the affidavit of some other credible person to the same fact, and which affidavit may be made before any one authorized to administer oaths, which affidavit shall be filed with the comptroller, and upon the filing of the same the comptroller shall draw his warrant for the quarter found to be due.

Proof to be made each quarter. Ib. §7.

Art. 3759. It shall be the duty of the district judges of this state to specially charge every session of the grand jury to investigate violations of this law.

Investigated by grand jury. Ib. §8.

Art. 3760. No person shall receive a greater fee than ten dollars to procure a pension for another, and any contract for a larger sum shall not be enforced by the courts.

Attorney's fee. Ib. §9.

Art. 3761. It shall be the duty of the comptroller, at least once in each year, to forward to the county judge a printed list of the pensioners in their respective counties, which list shall be posted in a conspicuous place in the office of said judge. It shall also be the duty of the comptroller, on the application of a grand jury, to forward to it, through the district clerk of the county in which the grand jury is convened, copies of any or all original papers on file in his office connected with an application for a pension which said grand jury may desire to investigate, and such copies with their correctness attested by the comptroller shall have the same force and value in a court of law that the original papers would have had.

Lists to be sent county judges for posting. Ib. §10.

TITLE LXXXI.

Pharmacy.

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Who shall conduct business. (Acts of 1889, p. 125, §1.)

Article 3762. It shall be unlawful for any person, unless a qualified pharmacist within the meaning of this law, to open or conduct any pharmacy or store for compounding medicines, or for any one not a qualified pharmacist to prepare physicians' prescriptions or compound medicines, except under the direct supervision of a qualified pharmacist as hereinafter provided.

Qualifications. Ch. §2.

Art. 3763. Any person in order to be qualified shall be twenty-one years old and shall have passed a satisfactory examination before the board of pharmacy of Texas, or shall be a graduate in pharmacy or an assistant in pharmacy.

Graduates. Ib. §3.

Art. 3764. Graduates in pharmacy shall be such as have obtained a diploma from a regular incorporated college of pharmacy, and that requires not less than two years' experience in stores where prescriptions of medical practitioners have been compounded before said diploma is issued.

Assistant. Ib. §4.

Art. 3765. Assistants in pharmacy must be twenty-one years old and have had two years' experience in stores where prescriptions of medical practitioners have been prepared, and shall have passed a satisfactory examination before the board of pharmacy of Texas.

Examining board to be appointed. Ib. §5.

Art. 3766. The presiding judge of the district court of the several judicial districts shall severally appoint a board of pharmaceutical examiners for their respective districts, who shall hold their office two years, which appointment shall be in writing and signed by the judge making the same, and delivered to the person appointed. Said board of pharmaceutical examiners shall be composed of not less than three qualified pharmacists who are residents of the districts of which they are appointed. If a vacancy occurs in said board another shall be appointed as aforesaid to fill the unexpired term. Said board shall have power to make by-laws and all necessary regulations for the proper fulfillment of their duties under this title.

Meetings of board. Ib. §6.

Art. 3767. The board shall meet once a year in as central portions of the district as practicable, and shall give one month's notice through the public press of the time and place of such meeting. The board shall organize for business by electing a registrar of pharmacy. The duties of said board shall be to examine all applicants for registration; to direct the registration by the registrar of all persons properly qualified or entitled thereto.

Art. 3768. The duties of the registrar of pharmacy shall be to keep a book in which shall be entered, under the supervision of the board of pharmacy, the name and place of business of every person who shall apply for registration, and a statement signed by the person making the application, of such facts in the case as may claim to justify his or her application. It shall also be the duty of the registrar to duly note the fact against the name of any qualified pharmacist who may have died or removed from the state or disposed of or relinquished his business.

Duties of registrar.
Ib. §7.

Art. 3769. Any person in order to become a qualified pharmacist within the meaning of this title shall apply and appear for examination and registration, and shall pay to the board of pharmacy five dollars; and on passing the examination required, shall be furnished free of cost a certificate of registration signed by the said board. Should said person fail to pass a satisfactory examination, he may at any other one meeting of the board of pharmacy within twelve months be permitted to be examined without cost.

Examination of applicants.
Ib. §8.

Art. 3770. Graduates, as specified in article 3764, shall apply for registration, and if they produce satisfactory evidence to the board of pharmacy that they have a right to be registered, shall, upon paying said board three dollars, be furnished a certificate of registration without examination.

Graduates—how registered.
Ib. §9.

Art. 3771. Proprietors who were actively engaged in the preparation of physicians' prescriptions and compounding and vending medicine in the state on the sixth of April, 1889, shall be exempt from examination; also assistants who were likewise engaged and were so engaged for three years, and are twenty-one years old; provided, he, she or they will register as specified in this title at the first meeting of the board of pharmacy, and upon paying the board three dollars shall be furnished with a certificate of registration; provided, that the provisions of this law shall not prevent any person from engaging in the business herein described as proprietors or owners thereof; provided, such proprietor or owner shall have employed in his business some qualified pharmacist to fill prescriptions and compound drugs.

Druggists exempt.
Ib. §10.

Art. 3772. All persons receiving a certificate of registration shall place it in a conspicuous place in their place of business. In failing to do this, the board of pharmacy shall cancel their registration and deprive them of their certificates. And any person who shall procure or attempt to procure registration for himself or for another, under this title, by making or causing to be made any false representation, shall be stricken from the register.

Certificates to be posted.
Ib. §11.

Art. 3773. Any member of the board of pharmacy may issue temporary certificates upon satisfactory proof that the applicant is competent, but said temporary certificate shall be null and void after the first regular or extra meeting of the board next after granting said temporary certificate; provided further, that not more than one temporary certificate shall ever be granted to any one person.

Temporary certificates.
Ib. §14.

Art. 3774. All courts having jurisdiction in criminal causes are required to give this title in charge to each grand jury impaneled in such courts.

Grand jury to investigate.
Ib. §15.

Art. 3775. This title shall not apply to towns and cities containing less than one thousand inhabitants. Towns and cities that arrive at one or more thousand inhabitants shall come within the provisions of this title. The manner of ascertaining the census shall be the last official one, whether it be federal, state, town or city.

Shall not apply, when.
Ib. §16.

Shall not ap-
ply, to whom.
ib. §17.

Art. 3776. Nothing in this title shall be construed to apply to any practitioner of medicine who does not keep open shop for compounding, dispensing and selling medicines, nor so construed as to prevent any person or persons from investing their means in a drug store or stores; provided, they keep employed qualified pharmacists for the direct supervision of vending and compounding medicines.

TITLE LXXXII.

Physicians.

Article	Article
Board of medical examiners shall be appointed by judge of each district.....3777 Board shall be composed, how.....3778 Duration of appointment.....3779 Shall organize and adopt rules.....3780 Meeting of board and notice to be given, etc.3781 Board shall have a seal.....3782 Vacancy in board filled by district judge.3783	Duty of board to examine applicants, etc.3784 Board shall issue certificate, when.....3785 Two members may grant certificate, and temporary certificate may be granted by one3786 Certificate shall be recorded, etc.....3787 Fee of board for examination.....3788 Persons to whom this act does not apply.3789

Article 3777. [3625] The presiding judges of the district courts 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.

Board of medical examiners shall be appointed by judge of each district. (Const., art. 16, §31.) (Act Aug. 21, 1876, p. 231, §3.)

Art. 3778. [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.

Board shall be composed, how. Ib.

Art. 3779. [3627] The appointment of a member of the board of medical examiners shall continue for two years from the date of such appointment.

Duration of appointment. Ib.

Art. 3780. [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.

Shall organize and adopt rules. Ib.

Art. 3781. [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.

Meetings of the board and notice thereof to be given. Ib. §4.

Art. 3782. [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.

Board shall have a seal. Ib. §4.

Art. 3783. [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.

Vacancy in board filled by district judge. Ib. §3.

Art. 3784. [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.

Duty of board to examine applicants, etc. (Const., art. 16, §31.) Ib. §3.

Board shall
issue certifi-
cates, when.
Ib. §3.

Art. 3785. [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 3787.

Two members
may grant
certificate,
and tempor-
ary certifi-
cate may be
granted by
one.
Ib. §§3, 4.

Art. 3786. [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 the board, at which time the temporary certificate shall cease to be of force.

Certificate
shall be re-
corded.
(Acts of 1887,
p. 25.)

Art. 3787. [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 district 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 said 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 examina-
tion.
Ib. §3.

Art. 3788. [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. 3789. [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.

TITLE LXXXIII.

Pilots.

CHAPTER ONE.

COMMISSIONERS OF PILOTS.

	Article		Article
Governor to appoint.....	3790	Further powers and duties.....	3793
Duties of commissioners.....	3791	Same subject.....	3794
Term of residence and of probation for pilots	3792	County judge to appoint committee, etc., to act in place of board.....	3795

Article 3790. [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. (Act April 17, 1846, p. 79, §2; Feb. 9, 1861, p. 19.) P. D. 4762, 4775.

Art. 3791. [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. 3792. [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. 3793. [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

Further powers and duties. Ib. §7. P. D. 4766.

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 shall be kept; provided, no regulation shall be adopted repugnant to the constitution.

Same subject.
Ib. §7.
P. D. 4767.

Art. 3794. [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. 3795. [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..... 3796	Pilots for mouth of Brazos..... 3804
Bond and oath..... 3797	Their bond, by whom approved..... 3805
May appoint deputies..... 3798	Pilots for Matagorda and Lavaca bays. 3806
Malfeasance and punishment..... 3799	To keep channels staked out..... 3807
Pilotage 3800	Pilotage for said bays..... 3808
Exemptions from extra pilotage..... 3801	Rules for branch pilots applicable..... 3809
Consignee responsible for pilotage..... 3802	Penalty for unlicensed pilot..... 3810
Unauthorized pilot to forfeit fifty dollars. 3803	

Appoint-ment, term and vacancies.
(Act April 17, 1846, p. 79, §1.)
P. D. 4761.

Article 3796. [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. 3797. [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.

Art. 3798. [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.

May appoint
deputies.
Ib. §8.
P. D. 4768.

Art. 3799. [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.

Malfesance
and punish-
ment.
Ib. §10.
P. D. 4770.

Art. 3800. [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 services 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, on 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 vessel shall be liable to 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 of 1879,
ch. 89, p. 99.)

Exemptions
from extra
pilotage.

Ib. p. 15.
P. D. 7201.

Art. 3801. [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 or 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.

Consignee re-
sponsible for
pilotage.

(Act April 17,
1846, p. 79,
§12.)

P. D. 4772.

Unauthor-
ized pilot to
forfeit \$50.

Ib. §11.
P. D. 4771.

Art. 3802. [3651] The consignee of any vessel shall be held responsible for the pilotage of said vessel.

Art. 3803. [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. 3804. [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 ap-
proved.

Ib.

Pilots for
Matagorda
and Lavaca
bays.

(Act Feb. 9,
1861, p. 19.)

P. D. 4775.

Art. 3805. [3654] The bonds of pilots for the mouth of the Brazos river shall be approved by the county judge of Brazoria county.

Art. 3806. [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 chan-
nels staked
out.

Ib.

Art. 3807. [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. 3808. [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. 3809. [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. 3810. [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 LXXXIV.

Principal and Surety.

Article	Article
Surety may require suit to be brought...3811	One surety may have execution against
Discharged by failure to sue.....3812	co-surety, when.....3816
May have question of suretyship tried,	Sheriff, etc., has same right as surety,
when3813	when3817
Execution levied first on property of	Surety not to be sued alone, unless, etc. 3818
principal3814	Who is surety within this title.....3819
Rights of surety who makes payment on	
judgment3815	

Article 3811. [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. 3812. [3661] If the creditor or obligee, not being under legal disability, shall fail to bring his suit to the first term of 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. 3813. [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. 3814. [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. 3815. [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 Rights of surety, who makes payment on a judgment. P. D. 4787.

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.

One surety
may have exe-
cution against
a co-surety,
when.
P. D. 4788.

Art. 3816. [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 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. 3817. [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. 3818. [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 1204.

Who is surety
within this
title.
P. D. 4789.

Art. 3819. [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 LXXXV.

Public Buildings and Grounds.

Article	Article
Appointment and term of office of superintendent of public buildings.....	Public property to be sold, when.....
3820	3827
Bond and oath	Shall have charge of halls, rooms, etc., when
3821	3828
Removal and liability on bond.....	Not to be used for private purposes.....
3822	3829
Superintendent to have charge of public buildings	Authority as policeman.....
3823	3830
Duties as to state cemetery.....	Shall frequently inspect, etc.....
3824	3831
Shall file inventory of property.....	To make report.....
3825	3832
Under whose control public rooms and buildings	Board and its powers.....
3826	3833
	Shall keep record, etc.....
	3834
	Sheriff to have charge of court house....
	3835

Article 3820. [3669] The governor shall appoint a suitable person as superintendent of public buildings and grounds, who shall hold his office for a term of two years. In case of a vacancy in said office the appointment shall be for the unexpired term.

Appointment and term of office of superintendent. (Act April 29, 1874, p. 165.) P. D. 7234f.

Art. 3821. [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.

Bond and oath. Ib. §2. P. D. 7234g.

Art. 3822. [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.

Removal and liability on bond. Ib. §4. P. D. 7234i.

Art. 3823. It shall be the duty of the superintendent to have and take charge and control of all public buildings, grounds and property of the state, which may not be used by the different officers of the state government, including the state cemetery, and to properly care for and protect the same from damage, intrusion or improper uses.

Superintendent to have charge of public buildings. (Acts of 1884, p. 60.)

Art. 3824. [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.

Duties pertaining to state cemetery. (Act April 14, 1871, p. 35.) P. D. 5885.

Art. 3825. [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.

Shall file inventory of property. (Act April 29, 1874, p. 165, §2.)

Different public rooms and buildings, under whose control. (Acts of 1884, p. 60.)

Art. 3826. The executive mansion and grounds belonging to the same and the executive offices in the state capitol, and the rooms therein occupied severally by the secretary of state, the comptroller, the treasurer, the attorney-general, the adjutant-general, the board of education, the commissioner of agriculture, insurance, statistics and history, and other officers, shall be under the charge and control of each of said officers occupying or using the same; and the rooms on the third floor wherein are the supreme court library and the rooms used and occupied as the offices of the clerks of the supreme court, court of criminal appeals, and court of civil appeals, shall be under the control and in the charge of the clerks of said courts.

Public property to be sold, when. Ib.

Art. 3827. All property belonging to the state situated or being in the city of Austin, or to any department, board or office of the state, when the same shall become unfit for use or no longer needed, shall be turned over to the said superintendent, who shall sell the same at public auction, after advertising it for not less than five days, and the money arising therefrom, less the expense of advertising and selling, shall be deposited in the state treasury to the credit of the department, board or office from which it was obtained, to be expended by the said superintendent for improvements or repairs whenever needed by the said departments, boards or offices, or for the state cemetery. The said superintendent shall make his report in writing to the comptroller, stating articles received, articles sold, to whom and at what price, and also a report showing how said funds were expended.

Shall have charge of halls, rooms, etc., when. (Acts of 1884, p. 60.)

Art. 3828. Said superintendent, during the recess of the legislature, shall have the charge and control of the halls and committee rooms of said capitol, except as hereinbefore provided, and before the assembling of each session of the legislature he shall prepare the different rooms for the uses of the legislature.

Not to be used for private purposes. Ib.

Art. 3829. No room, apartment or office in said building shall at any time be used by any person as a bedroom or for any private purposes whatever; provided, that this article shall not apply to the rooms occupied by the judges of the supreme court and courts of civil and criminal appeals, on the third and fourth floors of the capitol.

Authority as a policeman. Ib.

Art. 3830. The watchmen employed about and around the capitol and other buildings and grounds shall have all the powers and authority of a policeman of the city of Austin; and whenever, for the purpose of properly executing the provisions of this law, under the approval of the governor, by the said superintendent, there may arise a conflict with any ordinances or authority granted or given under or by virtue of the charter of the city of Austin, then and in that event so much of the said charter as authorizes the granting of such ordinances or the giving of such authority, be and the same is hereby repealed in so far as they prevent the said superintendent from efficiently performing his duties hereunder.

Shall frequently inspect all state property. Ib.

Art. 3831. It shall be the duty of the said superintendent to frequently inspect all the public buildings and property of the state at the capital, and at such other places as the governor may direct; to act as adviser to all state boards in the preparation of specifications and plans for improvements and repairs to public buildings or property of the state, and to superintend the construction of said work, where the same is not otherwise specially provided for by law. The said state boards and departments shall notify the said superin-

tendent of improvements and repairs needed for their respective buildings and offices, and the same shall be made under his direction. He shall also be required to give his special attention to the effective maintenance of the state sewers and their connections, in use at the public buildings, and to keep the same in such sanitary condition at all times as to prevent the dissemination of disease therefrom, and to see that the gas and water pipes, with their connections and appliances, are maintained in working order, ready at any time for immediate use. He shall also be required to prepare and have in his office a copy of the plans of all public buildings and improvements thereto under his charge, showing the exact location of all water, gas and sewerage pipes, so that in case of needed repairs or inspection, their position can be determined without unnecessary expense.

Art. 3832. It shall be the duty of said superintendent to make a report to the governor on the first day of December, biennially, showing the manner in which he has discharged his duties, the improvements and repairs that have been made under his superintendence, with an itemized account of his receipts and expenditures, and the condition of all property under his charge, including an estimate of needed improvements and repairs to same.

To make reports.
ib.

[Note.—Articles 3833 and 3834 (acts of 1879, S. S., p. 36, sections 1 and 2) stricken out. See report of joint committee on amendments to Civil Statutes, Sen. Jour., p. 480.]

Art. 3835. [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.

Sheriffs to have charge of court houses.

TITLE LXXXV. A.

Public Debt.

	Article		Article
Bonds and obligations declared valid..	3835a	Acts to remain in force until obligations are discharged	3835b

Bonds and obligations declared valid. (Sen. Jour. 1895, p. 480.)

Article 3835a. [3677] All outstanding bonds or other obligations, issued under the provisions of either of the following 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:

1. 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.

2. 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.

3. 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 retirable in the years 1876 and 1877, and to make adequate provision for the floating indebtedness of the state, and to make an appropriation carry into effect the provisions of the same, approved July 6, 1876.

4. An act to provide for the issuance and sale of bonds for the purpose of retiring the outstanding bonds of the state, and to supply deficiencies in the revenue, and to provide the mode and manner of the sale of said bonds, approved April 21, 1879.

5. An act to provide for the payment of the bonds of the state carry into effect the provisions of the same, approved July 6, 1876. which was approved April 5, 1889.

6. An act to provide for the retirement of the past due bonds of the state of Texas, for the payment of interest thereon, and the issuance of other bonds at a lower rate of interest in lieu thereof, approved May 2, 1893.

Art. 3835b. [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 the 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.

Laws to remain in force until obligations are discharged. lb. 481.

TITLE LXXXVI.

Public Education.

CHAPTER ONE.

UNIVERSITY OF TEXAS.

	Article	Article
University funds.....	3836	Shall vest in state in trust, when..... 3840
Shall be held in trust and invested.....	3837	Must be subject to laws, etc..... 3841
Title by donation may be vested.....	3838	Copies of donation must be filed with
Donor may direct transmission.....	3839	board, when..... 3842

Article 3836. [3679] The following shall constitute a permanent fund for the university of Texas, to be used for the benefit of said university:

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. One million acres of the unappropriated public domain of the state set apart for that purpose by the present constitution, and one million acres of land set apart by act of April 10, 1883.
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 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. 3837. [3680] Such portions 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 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. 3838. Any person, association of persons or body corporate making a donation of property for the purposes of establishing or assisting in the establishment of a professorship or scholarship in the university or any of its branches, either temporarily or permanently, may vest the legal title to the property in any person or persons, body corporate, or the state of Texas, to be held in trust for said purpose, under such directions, limitations and provisions as may be declared in writing in the donation which are not inconsistent with the objects and proper management of said institution or its branches.

Title by donation may be vested, how. (Acts of 1889, p. 143, §1.)

Art. 3839. It shall be lawful for the person or persons or body corporate to declare and direct the manner in which said title to said property shall thereafter pass or be transmitted from the person or persons or body corporate receiving it to others in continued suc-

Donor may direct transmission of title. Ib. §2.

cession, to be held and appropriated to the use aforesaid, and it shall be lawful for the donor or donors to declare and direct the person or class of persons who shall receive the benefit of said donation, together with the manner in which the person or persons who shall receive said benefits shall be from time to time selected, as it may become necessary to carry out the objects of the donation; provided, said declarations and directions are not inconsistent with the objects and proper management of said institution or its branches.

Shall vest in the state in trust, when.
1b. §3.

Art. 3840. In the event there is a failure to transmit the title to the property or to bestow its use in the manner as declared and directed in the donation, or in the event they or either of them should become impracticable from the change of circumstances, the title to the property unless otherwise directed expressly by the donor shall vest in the state of Texas, to be held in trust to carry into effect the purposes of the donation as nearly as may be practicable by such agencies as may be provided therefor.

Must be subject to laws, etc.
1b. §4.

Art. 3841. The title to said property donated shall be received and the trust conferred in the donation shall be assumed, subject to laws that may be passed and carried into effect from time to time which may be necessary to prevent the loss of or damage to the property donated, or an abuse or neglect of the trust so as to defeat, materially change, or prevent the objects of the donation.

Copies to be filed with board, etc.
1b. §5.

Art. 3842. Copies of said donation shall be procured and filed with the board which may have control of the university or any of its branches to which the donation applies, which board shall report the condition and management of the property and the manner in which the trust is being administered, as part of the matters reported pertaining to said institution.

CHAPTER TWO.

GOVERNMENT OF THE UNIVERSITY.

Article	Article
Government of, how vested..... 3843	Expenditures, how made..... 3852
Board of regents classified..... 3844	Religious qualifications..... 3853
May use seal..... 3845	Annual reports to board of education..... 3854
How organized..... 3846	Board of visitors..... 3855
May remove officers, when..... 3848	Expenses of regents, etc..... 3856
Admission fee limited..... 3849	Manuscript bonds..... 3857
Treasurer of funds..... 3850	Character of bonds..... 3858
Available fund..... 3851	Form of bonds..... 3859

Government of university—how vested. (Acts of 1881, p. 94; amend. 1895, p. 169.)

Article 3843. The government of the university shall be vested in a board of eight regents, selected from different portions of the state, who shall be nominated by the governor and appointed by and with the advice and consent of the senate. The members of the board of regents heretofore appointed shall continue to exercise their duties until the expiration of their respective terms.

Board of regents classified. (Acts of 1881, p. 80, §6.)

Art. 3844. The board of regents shall be divided into classes, numbered one, two, three and four, as determined by the board at their first meeting; shall hold their office two, four, six and eight years respectively, from the time of their appointment. Two members shall be appointed at each session of the legislature to supply the vacancies made by the provisions of this article, and in the manner provided for in the preceding article, who shall hold their offices for eight years respectively.

Art. 3845. The regents and their successors in office shall have the right of making and using a common seal and altering the same at pleasure.

Shall have right to use seal.
Ib. §7.

Art. 3846. The regents shall elect a chairman of the board of regents from their own number, who shall hold his office during the pleasure of the board. They shall establish the departments of a first-class university, determine the offices and professorships, appoint a president, who shall, if they think it advisable, also discharge the duties of a professor, appoint the professors and other officers, fix their respective salaries, and they shall enact such by-laws, rules and regulations as may be necessary for the successful management and government of the university; they shall have power to regulate the course of instruction and prescribe, by and with the advice of the professors, the books and authorities used in the several departments, and to confer such degrees and to grant such diplomas as are usually conferred and granted by universities.

How organized.
Ib. §8; amend. 1895, p. 169.

[Note.—Article 3847 was repealed by the act of 1895, p. 169.]

Art. 3848. The regents shall have power to remove any professor, tutor or other officer connected with the institution, when, in their judgment, the interest of the university shall require it.

May remove officers.
Ib. §10.

Art. 3849. The fee of admission to the university shall never exceed thirty dollars, and it shall be open to all persons in the state who may wish to avail themselves of its advantages, and to male and female on equal terms, without charge for tuition, under the regulations prescribed by the regents, and all others under such regulations as the board of regents may prescribe.

Admission fee limited.
Ib. §11.

Art. 3850. The treasurer of the state shall be the treasurer of the university.

Treasurer.
Ib. §12.

Art. 3851. The regents shall have authority to expend the interest which has heretofore accrued, and may hereafter accrue, on the permanent university fund, for the purposes herein specified, and for the maintenance of the branches of the university.

Available fund.
Ib. §18.

Art. 3852. All expenditures may be made by the order of the board of regents, and the same shall be paid on warrants of the comptroller, based on vouchers approved by the president and countersigned by the secretary.

Expenditures, how made.
Ib. §19.

Art. 3853. No religious qualification shall be required for admission to any office or privilege in the university; nor shall any course of instruction of a sectarian character be taught therein.

No religious qualification required for admission.
Ib. §20.

Art. 3854. The board of regents shall report to the board of education annually, and to each regular session of the legislature, the condition of the university, setting forth the receipts and disbursements, the number and salary of the faculty, the number of students, classified in grades and departments, the expenses of each year, itemized, and the proceedings of the board and faculty fully stated.

Annual report to board of education.
Ib. §21.

Art. 3855. There shall be appointed by the legislature at each regular session a board of visitors, who shall attend the annual examinations of the university and its branches and report to the legislature thereon.

Board of visitors.
Ib. §22.

Art. 3856. The reasonable expenses incurred by the board of regency and visitation in the discharge of their duties shall be paid from the available university fund.

Expenses of regents and visitors to be paid.

Governor to have issued manuscript bonds. (Acts of 1889, p. 81.)

Art. 3857. The governor is authorized and directed to have issued manuscript bonds of the state of Texas, to be sold or exchanged at par for the permanent university fund at any time when there is on hand in cash any reasonable amount of such funds not less than five thousand dollars.

Character of bonds. Ib. §2.

Art. 3858. Said bonds shall be of such denomination as the governor may direct, and shall be redeemable at the pleasure of the state, and shall bear interest at the rate of five per centum per annum, payable annually at the state treasury on the first day of March of each year.

Form of bonds. Ib. §3.

Art. 3859. The bonds issued under this chapter shall recite the title and date of passage of the act of 1889, page 81, shall be signed by the governor and treasurer and countersigned by the comptroller, and shall be registered in the office of the state treasurer; and after said bonds have been registered the governor shall offer said bonds to the board of education as an investment for the permanent university fund then on hand in cash which are by law authorized to be invested; and if the board of education take said bonds, the treasurer and comptroller shall make the proper entry, showing the facts of the transaction and the necessary transfer of such fund on their books; and if the board of education shall not take said bonds thus offered, the same shall be destroyed and cancelled and of no effect whatever.

CHAPTER THREE.

AGRICULTURAL AND MECHANICAL COLLEGE.

Article	Article		
Made branch of university.....	3860	By-laws, etc., to be printed.....	3871
Leading objects of same.....	3861	Perpetual fund.....	3872
Board of directors.....	3862	Accrued interest, how invested.....	3873
How appointed—term of office.....	3863	Duty of state board of education.....	3874
Vacancies, how filled.....	3864	Money, how drawn from treasury, and for what purposes.....	3875
Quorum, what constitutes.....	3865	Duty of comptroller to issue warrants, when.....	3876
Expenses of directors, how paid.....	3866	College for colored youths.....	3877
Certificate of appointment, etc.....	3867	Powers and duties of board of directors as to same.....	3878
Number of students receiving free instruction.....	3868		
Board shall appoint, etc.....	3869		
May make by-laws, etc.....	3870		

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. 72. P. D. 5693 et seq.

Article 3860. [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.

Leading objects of the college. (12 U. S. Stat., p. 503; act Cong. July 2, 1862, §4.)

Art. 3861. [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.

Board of directors. (Acts of 1881, p. 75.)

Art. 3862. [3684] The board of directors of said college shall consist of five members.

Art. 3863. [3685] The directors provided for in the preceding article shall be appointed by the governor, to be selected from the different sections of the state, and shall hold office for six years or during good behavior, and until their successors are qualified.

Directors,
how ap-
pointed, term
of office.
Ib.

[Note.—The commissioner of agriculture, insurance, statistics and history is ex officio a member of said board.—See article 2927.]

Art. 3864. [3686] Should a vacancy occur in the said board by the death, resignation or otherwise of any one of the directors so appointed, the governor shall fill the same by appointment, which shall continue until the term for which he was appointed shall expire.

Vacancy, how
filled.
Ib.

Art. 3865. [3687] The governor shall be authorized to call said board together after their appointment, and said board shall at their first meeting elect from their number a president of the board, who shall thereafter be authorized to call said board together for the transaction of business whenever he deems it expedient, and a majority of said board shall constitute a quorum for the transaction of business.

Quorum,
what consti-
tutes.
Ib.

Art. 3866. [3689] Each of said directors shall receive their actual expenses incurred in attending the meetings of the board, to be paid out of the interest of the university fund, on accounts certified by them respectively to be correct, and approved by the governor, the daily pay of the directors not to exceed five dollars, and the annual pay of the secretary not to exceed five hundred dollars.

Expenses of
directors, how
paid.
Ib.

Art. 3867. [3692] The secretary of state shall forward a certificate to each director within ten days after his appointment, notifying him of the fact of such appointment, and should any director so appointed and notified fail for ten days to give notice to the governor of his acceptance, his appointment shall be deemed void, and his place filled as in case of vacancy.

Certificate of
appointment
to be sent.
Ib.

Art. 3868. There shall be maintained and instructed at said college annually, free of charge to them, three students from each senatorial district in this state, one of whom shall be appointed by the senator of such district, and the other two by the representatives thereof. One-half of said students so appointed shall be compelled to take an agricultural and the other half a mechanical course of study, to be assigned thereto by the president of said college; and in order to pay their expenses the comptroller, on proper vouchers being filed in his office by the directors, is authorized to draw his warrant on the state treasurer, against any appropriation made for that purpose.

Number of
students to
receive in-
struction free
of charge.
(Acts of 1881,
p. 75.)

Art. 3869. [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.

Board shall
appoint presi-
dent, profes-
sors, etc., of
the college,
etc.
(Acts of 1875,
p. 74.)

Art. 3870. [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.

May make
by-laws, etc.
Ib.

Art. 3871. [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

By-laws, etc.,
shall be
printed.
Ib.

of the said college, such by-laws, rules and regulations as they are authorized by the preceding article to prescribe.

Perpetual fund.
(12 U. S. Stat., p. 503; 14 U. S. Stat., p. 203.)
(Act March 9, 1876, p. 73, §8.)
P. D. 5793.

Art. 3872. [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.

Accrued interest on bonds, how invested.
(Act Aug. 21, 1876, p. 283, §1.)

Art. 3873. [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.

Duty of state board of education.
(Const., art. 7, §8.)
(Acts Aug. 21, 1876, p. 283, §2; March 9, 1875.)

Art. 3874. [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.

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. 3875. [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 the 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.

Duty of comptroller to issue warrant, when.
Ib.

Art. 3876. [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.

College for colored youths.
(Act Aug. 14, 1876, p. 136, §§1, 2.)

Art. 3877. [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.

Powers and duties of the board of directors.
(Const., art. 7, §14.)

Art. 3878. [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.

CHAPTER FOUR.

SAM HOUSTON NORMAL INSTITUTE.

Sam Houston Normal Institute at Huntsville3879 Free tuition to how many students.....3880 Obligations of students.....3881	Article at 3879 3880 3881	Pay students3882 Local board of directors.....3883 Appropriations therefor3884	Article 3882 3883 3884
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Article 3879. The board of education shall have possession and charge of the Sam Houston Normal Institute, which shall be conducted in a first-class manner, and under such rules and regulations as to the government and discipline thereof as may be prescribed by said board.

The Sam Houston Normal Institute at Huntsville. (Acts of 1879, p. 182, §2.)

Art. 3880. Not less than two students from each senatorial district, and six from the state at large, shall be received in said institute as state students, who shall receive tuition, board and lodging free to the extent of the appropriation that may be made, but in no case shall the current expenses of the institute exceed the sum or sums appropriated. The board of education shall make all necessary rules and regulations for the admission of students and the manner of their appointment or selection. No student shall be received who is not a resident of this state and at least of the age of sixteen years and of good moral character.

Number of students to receive free tuition, etc. Ib. §3.

Art. 3881. All students attending said institute at expense of the state, as provided in the foregoing article, shall sign a written obligation in a book to be kept at the institute for that purpose, binding said students to teach in the public free schools of their respective districts at least one year next after their discharge from the normal school and as much longer than one year as the time of their attendance at said school shall exceed one year, for which teaching said student shall receive the same compensation allowed other teachers of said schools, and said board of education shall make rules by which students may receive certificates of qualification as teachers, authorizing them to teach without further examination.

Obligation of students. Ib. §4.

Art. 3882. The board of education may authorize other students to be admitted into said institute, who shall be required to pay tuition, in whole or in part, as may be prescribed by the board. Said board shall appoint the teachers of said institute and fix their salaries, not to exceed two thousand dollars for the principal and fifteen hundred dollars for assistants.

Pay students. Ib. §5.

Art. 3883. The board of education shall appoint a local board of three directors, who shall hold frequent meetings at the institute, have general supervision of the building and grounds and shall perform such other duties pertaining to the institute, and make such reports to the board of education as said board may require. Said directors shall each receive an annual salary, not to exceed one hundred dollars, to be paid out of the fund hereinafter appropriated.

Local board of directors. Ib. §6.

Art. 3884. It shall be the duty of the comptroller of public accounts, annually, to set apart out of the available free school fund the sum of fourteen thousand dollars for the support of said normal school and place the same to its credit, and which may be drawn upon by the board of education for the current expenses of said school on vouchers audited by said board or approved by the governor and attested by the secretary; and on filing said vouchers the

Annual appropriation from available school fund. Ib. §7.

comptroller shall draw his warrant on the state treasurer for the same. The board of education is authorized to receive from the agent of the trustees of the Peabody education fund such sums as he may tender for the aid of said institute, and shall disburse the same in such manner as will best subserve the interests of said institute.

CHAPTER FIVE.

NORMAL SCHOOL FOR COLORED TEACHERS AT PRAIRIE VIEW.

	Article		Article
Under what management.....	3885	Appropriations for	3889
How many admitted.....	3886	Rules for teachers' certificates without	
Duties of the board.....	3887	further examination	3890
Admission and obligation of students, etc.	3888		

Under what management.
(Acts of 1879,
p. 181.)

Article 3885. The normal school for colored teachers at Prairie View shall be under the control and supervision of the board of directors of the Agricultural and Mechanical College.

How many to be admitted.
Ib. §2.

Art. 3886. Said board of directors shall admit one student from each senatorial district in this state, and at least three students from the state at large, to be taken from the colored population of this state, and be not less than sixteen years of age at the time of their admission.

Duties of board.
Ib.

Art. 3887. Said board shall appoint a principal teacher and such assistant teacher or teachers of said school, and other officers of said school as may be necessary, and shall make such rules, by-laws and regulations for its government as they may deem proper, and shall regulate the course of study and the manner of performing labor to be performed by the students, and shall provide for the board and lodging and instruction of the students without pecuniary charge to them, and shall regulate the course of discipline necessary to enforce the faithful discharge of the duties of all officers, teachers, students and employes of said school, and shall have the same printed and circulated for the benefit of the people of the state and of the officers and students of the school.

Admissions, obligations of students, etc.
Ib.

Art. 3888. The board of directors may provide for receiving such a number of students of both sexes as in the judgment of said board the school can best accommodate, and shall require all students admitted to said school to sign a written obligation (in a proper book kept for that purpose) binding said student to teach in the public free schools for the colored population of their respective districts at least one year next after their discharge from the normal school, and as much longer than one year as the time of their connection with said normal school shall exceed one year; for which teaching said discharged student shall receive the same rate of compensation allowed other teachers of such schools with like qualifications.

Appropriations for.
(Acts of 1879,
p. 181.)
Ib. §4.

Art. 3889. It shall be the duty of the comptroller of public accounts annually to set apart out of the interest accruing from the university fund, appropriated for the support of public free schools, the sum of six thousand dollars for the support of said normal school, and place said fund to the credit of said normal schools, and the same may be drawn by the board of directors on vouchers audited by the board or approved by the governor and attested by the secretary; and on filing such vouchers the comptroller shall draw his

warrant on the state treasury for the same from time to time as the same may be needed.

Art. 3890. The board shall make rules by which students can obtain certificates of qualification as teachers that will entitle them to teach without other or further examination.

Rules for teacher's certificate without further examination. Ib. §1.

CHAPTER SIX.

THE PUBLIC FREE SCHOOLS.

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THE PUBLIC FREE SCHOOLS.

Article 3891. [3703] The constitutional provisions for public schools are hereby appended as a part of the school law of this state.

Constitutional provisions relating to the public free schools. (Const., art. 7, §§2-6; Acts 1893, p. 182.)

“Article 7—Section 1—A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the legislature of the state to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.

“Sec. 2. All funds, lands and other property heretofore set apart and appropriated for the support of the 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.

“Sec. 3. One-fourth of the revenue derived from the state occupation taxes, and a poll tax of one dollar on every male inhabitant of this state between the ages of twenty-one and sixty years, shall be set apart annually for the benefit of the public free schools, and, in addition thereto, there shall be levied and collected an annual ad valorem state tax of such an amount, not to exceed twenty cents on the one hundred dollars valuation, as, with the available school fund arising from all other sources, will be sufficient to maintain and support the public free schools of this state for a period of not less than six months in each year; and the legislature may also provide for the formation of school districts within all or any of the counties of this state, by general or special law, without the local notice required in other cases of special legislation, and may authorize an additional annual ad valorem tax to be levied and collected within such school districts for the further maintenance of public free schools and the erection of school buildings therein; provided, that two-thirds of the qualified property tax-paying voters of the district, voting at an election to be held for that purpose, shall vote such tax, not to exceed in any one year twenty cents on the one hundred dollars valuation of property subject to taxation in such district, but the limitation upon the amount of district tax herein authorized shall not apply to incorporated cities or towns constituting separate and independent school districts.

(Amendment of 1884, §3.)

Ib. §4.

“Sec. 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 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 the United States, the state of Texas or counties in said state, or in such other securities and under such restrictions as may be prescribed by law; and the state shall be responsible for all investments.

(Amendment of 1891.)

“Sec. 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, to which the legislature may add not exceeding one per cent annually of the total value of the permanent school fund, such value to be ascertained by the board of education until otherwise provided by law, and the available school fund 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.

(Const. amendment of 1884.)
Ib. §6.

“Sec. 6. All lands heretofore or hereafter granted to the several counties of this state for educational purposes 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 manner to be provided by the commissioners' court of the county. 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 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 for the United States, the state of Texas, or counties in said state, or in such other securities and under such restrictions as may be prescribed by law; and the counties shall be responsible for all investments; the interest thereon and other revenue, except the principal, shall be available funds.

“Sec. 7. Separate schools shall be provided for the white and colored children, and impartial provision shall be made for both.

“Sec. 8. The governor, comptroller and secretary of state shall constitute a board of education, who shall distribute said funds to the several counties, and perform such other duties concerning public schools as may be prescribed by law.”

PERMANENT SCHOOL FUND.

County bonds to be examined, etc., by attorney-general. (Acts of 1885, p. 40, §1; amend. 1893, p. 134.)

Art. 3892. Hereafter when any county bonds are offered for sale as an investment for the permanent public free school fund of the state, and the same are desired for investment, the party offering and proposing to sell such bonds shall first submit them to the at-

torney-general of the state, who shall carefully inspect and examine the same, in connection with the law under which they were issued, and shall diligently inquire into all the facts and circumstances, so far as may be necessary to determine the validity thereof, and upon being satisfied that such bonds were issued in conformity with law, and that they are valid and binding obligations upon the county by which they purport or appear to have been issued, he shall thereupon certify, and his certificate to that effect so procured by the party offering such bonds for sale shall be submitted to the comptroller, or board of education, with the bonds so offered for sale; and should the same be purchased as an investment for the permanent public free school fund from the county issuing the same, or from any person authorized by said county to act for it in the negotiation or sale of such bonds, they shall thereafter be held in every action or proceeding in which their validity is or may be called in question to be valid and binding obligations of the county issuing the same, unless fraudulently issued, or issued in violation of constitutional limitation; and in every such action the certificate of the attorney-general as aforesaid (which shall be carefully preserved by the comptroller) shall be admitted and received as prima facie evidence of the validity of the bonds and coupons thereto, which may have been so purchased.

Art. 3893. Nothing in the preceding article shall be so construed as to relieve the comptroller or board of education from the duty of a careful examination of the bonds offered as an investment for the permanent public free school fund of the state, an investigation of the facts tending to show the value and validity thereof, and such board of education may decline to purchase the same unless satisfied that they are a safe and proper investment for such funds; and no county bonds shall be purchased as an investment for the permanent public free school fund that do not bear interest at the rate of at least five per cent per annum, nor shall the amount paid for any such bonds exceed the par or face value thereof, and it shall be the duty of the board of education and comptroller to decline to purchase the bonds of any county whose indebtedness, inclusive of the bonds so offered, shall exceed five per cent of the assessed value of the real estate in such county, and if default be made in the payment of interest when due, upon any such bonds, the board of education may, at any time prior to the payment of such over-due interest, elect to treat the principal as also due, and the same shall thereupon, at the option of the board of education, become due and payable, and the payment of both such principal and interest shall in all cases be enforced in such manner as is or may be provided by law, and the right to enforce such collection shall never be barred by any law or limitation whatever.

Art. 3894. In all cases where the proceeds of the sale of any bonds have been received by the proper officers of the county, or by the party acting for it in negotiating the sale thereof, such county shall be thereafter estopped from denying the validity of such bonds so issued, and the same shall be held to be valid and binding obligations of the county, and in any action upon such bonds or coupons thereto judgment shall be rendered against the county for the amount of the bonds sued on and interest thereon at the rate mentioned therein, deducting such amounts, if any, as have been previously paid thereon.

Duties of board of education in investing school fund.
Ib. §2; amend., 1893, p. 184.

County estopped from questioning validity.
Ib. §3.

Payment of interest waiver of error. *ib.* §4; amend. 1893, p. 185.

Art. 3895. The payment of any interest upon any bonds heretofore purchased, with public school funds, or belonging thereto, shall be deemed and held a waiver of any supposed error, irregularity or want of authority affecting or tending to affect the validity of any such bonds; and the same shall thereafter be held to be valid and binding obligations upon the county by which they appear or purport to have been issued, notwithstanding any such supposed error, irregularity or want of authority as aforesaid.

District court of Travis county invested with concurrent jurisdiction. (Acts 1893, p. 185.)

Art. 3895a. The district court of Travis county shall have jurisdiction of any suit upon bonds or obligations belonging to the permanent public school funds, or purchased therewith, concurrent with that of any other court having jurisdiction in such case.

Provisions apply to all bonds, except. *ib.* §6.

Art. 3896. The provisions of this chapter shall extend to any bonds or securities other than the bonds of this state or of the United States, in which the public school funds are or may hereafter be invested, as now or hereafter authorized or prescribed by law, and also to any bonds or securities purchased with any of the permanent funds set apart for the support, maintenance and improvement of any of the asylums or other institutions of this state.

CHAPTER SEVEN.

GENERAL PROVISIONS.

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	Report to be laid before the legislature and copies to be distributed, etc.....
	Expenses for books, etc., to be allowed.....

Available fund of state. *ib.*

Article 3897. One-fourth of all occupation taxes and the one dollar poll tax levied and collected for the use of public free schools, exclusive of the delinquencies and 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 sale of land heretofore set apart for the permanent school fund which have hitherto or may hereafter come into the state treasury; all moneys arising from the lease of school lands, and such an amount of state tax, not to exceed twenty cents on the one hundred dollars valuation of property as may be from time to time levied by the legislature, shall constitute the available school fund, which fund shall be apportioned annually to the several counties of this state according to the scholastic population of each, for the support and maintenance of the public free schools.

One per cent of permanent added. (Acts of 1892, p. 8.)

Art. 3898. One per cent of the full value of what is known, held and controlled by the state of Texas as the permanent school fund shall be transferred annually hereafter to the credit of the available school fund of the state, as belonging to it and a part of the same, and which henceforward shall constitute a part of the state's available school fund and to be used and applied for the support, maintenance and benefit of the public free schools of the state, as now or hereafter may be provided by law.

Art. 3899. It shall be the duty of the comptroller and the state treasurer to notify the state board of education of the amount to the credit of the permanent school fund on the first to the fifteenth day of July of each and every year. The said statement shall show the amount invested in the bonds, the amount of outstanding land notes, and the amount of cash on hand to the credit of the permanent school fund. Upon the receipt of this information the state board of education shall estimate one per cent of the said permanent school fund, and shall issue directions to the said comptroller and state treasurer to transfer the one per cent of the permanent fund thus found to the credit of the available school fund.

How estimate to be made. Ib. §2; amend. 1893, p. 182.

Art. 3900. It shall be the duty of the state comptroller and state treasurer upon the receipt and delivery to them by said board of education of the showing and statement aforesaid, to transfer and place to the credit of the available school fund of the state the amount found and ascertained by said board of education as aforesaid, and accruing from the one per cent of value of the permanent school fund and transferred to the available school fund under article 3898; provided, that no part, or the value thereof, of the unsold public land belonging to said fund shall be included or considered by the comptroller and state treasurer in ascertaining the amount to be transferred from the permanent to the available free school fund.

Duty of comptroller and treasurer to transfer fund, when. Ib. §3; amend. 1893, p. 182.

Art. 3901. It shall be the duty of the state board of education and comptroller, in the management and investment of the permanent school fund, to provide, reserve and set apart in cash annually an amount sufficient of the same to meet the one per cent annual transfer to the available fund.

Duty to be performed annually. Ib. §4.

Art. 3902. The proceeds of any leasing or renting of lands heretofore granted by the state of Texas to the several counties thereof for educational purposes shall be appropriated by the commissioners' courts of said counties in the same manner as is provided by law for the appropriation of the interest on bonds purchased with the proceeds of the sale of such lands; and the proceeds arising from the sale of timber on said lands or any part thereof shall be invested in like manner as the constitution and law requires of proceeds of sales of such 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.

Available county school funds. (Acts of 1884, p. 72.)

Art. 3903. No part of the public school fund shall be appropriated to or used for the support of any sectarian school.

Sectarian schools. Ib. §3. (Acts of 1884, p. 40.)

Art. 3904. All available public school funds of this state shall be appropriated in each county for the education alike of white and colored children, and impartial provisions shall be made for both races.

Apportionment to be equal to all races. Ib. §4; amend. 1893, p. 184.

Art. 3905. All children without regard to color, over eight years of age and under seventeen years of age, at the beginning of any scholastic year, shall be entitled to the benefit of the public school fund for that year.

Scholastic age. Ib. §5; amend. 1893, p. 182.

Art. 3906. The scholastic year shall commence on the first day of September of each year and end on the thirty-first day of August thereafter.

Scholastic year. Ib. §6.

Art. 3907. 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 public school fund.

Separate schools for the races. Ib. §7.

"Colored race" and "Colored children" defined. *Ib.* §8; amend. 1893, p. 182.

Art. 3908. The terms "colored race" and "colored children" as used in the preceding articles and elsewhere in this title, include all persons of mixed blood, descended from negro ancestry.

Title to property for schools, how vested. *Ib.* §9; amend. 1893, p. 182.

Art. 3909. All conveyances, devices and bequests of property for the benefit of the public schools, made by any one for any county, city, town or district, shall, when not otherwise directed by the grantor or devisor, vest said property in the county judge of the county, or the mayor of the city or town, or the trustees of the school district or their successors in office, as the trustees for those to be benefited thereby, and the same, when not otherwise directed, be administered by said officers under such rules as may be established by the state superintendent.

Public school curriculum. (Acts 1893, p. 187.)

Art. 3909a. All public schools in this state shall be required to have taught in them orthography, reading in English, penmanship, arithmetic, English grammar, modern geography, composition, physiology, and hygiene, including the effects of alcoholic stimulants and narcotics on the human system, and other branches as may be agreed on by the trustees or directed by the state superintendent.

School officers to take oath. *Ib.*

Art. 3909b. County superintendents, county judges, and all school officers shall take oaths to faithfully and impartially discharge the duties of their respective offices.

School days and school month defined. *Ib.* §10; amend. 1893, p. 182.

Art. 3910. Public schools shall be taught for five days in each week. Schools shall be closed on legal holidays. A school month shall consist of not less than twenty school days, exclusive of holidays, and shall be taught for not less than seven hours each day, including intermissions and recesses.

[Note.—Article 3911, repeated in the codification of 1893 as article 3921, is dropped, the last number being retained.]

[Note.—Articles 3912, 3913, 3914, 3915 and 3916 are stricken out of this chapter in conformity with the report of the joint committee on amendments to the civil statutes, enacted as a bill by the 24th legislature, the same matter being codified as chapter eight, title LII. hereof.]

Shall require reports from officers. (Acts of 1889, p. 15; amend. 1893, p. 182.)

Art. 3917. The state superintendent shall require of county judges, county, city, and town superintendents, county and city treasurers, and treasurers of school boards, and other school officers and teachers, such school reports relating to the school fund and other school affairs as he may deem proper for collecting information and advancing the interests of the public schools, and shall furnish to county, city, and town superintendent, and other school officers and teachers, 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; and any county judge, or county, city, or town superintendent, assessor, treasurer, or teacher, who shall willfully fail to make such report within twenty days after the same shall have been required by the state superintendent to be filed, shall be deemed guilty of a misdemeanor, and shall on conviction be fined in any sum not less than twenty-five dollars nor more than five hundred dollars, the same to be paid, when collected, to the available school fund.

Shall report to the board of education, when. (Acts of 1884, p. 42, §18.)

Art. 3918. The state superintendent shall, one month before the meeting of each regular session of the legislature, and ten days prior to any special session thereof, at which, under the governor's proclamation convening the same, any legislation may be had respecting the public schools, make a full report to the board of education of

the condition of the public schools throughout the state. Such reports shall give all the information called for by the board of education, and contain such other matters as the state superintendent shall deem important.

Art. 3919. The governor shall lay such reports before the legislature, and two thousand copies of said report shall be printed in pamphlet form for the use of the legislature and for distribution among the various school officers and libraries within the state and the superintendents of public schools of other states and territories of the United States and Canada, and the bureau of education at Washington City.

Art. 3920. The state superintendent shall be allowed by the state board of education an amount necessary for the expenses for books, postage, express charges, printing, stationery, clerk and porter hire, and other necessary office expenses; provided, that said state board shall make no allowance of funds in excess of the amounts appropriated by the legislature for this department; and provided, that in all cases when there is a deficiency in the available school fund and warrants are issued in settlement of accounts for expenses provided for in this article, said warrants shall not be negotiable until after such accounts shall have been approved by the legislature.

To be laid before the legislature.
Copies to be distributed among school officers.
Ib. §20; amend. 1893, p. 182.
Expenses for books, etc., to be allowed him.
(Acts of 1893, p. 182.)

CHAPTER EIGHT.

THE STATE BOARD OF EDUCATION.

Article	Article
Board of education, how organized..... 3921	Shall make report to legislature..... 3925
Superintendent ex officio secretary..... 3922	Duties of, in relation to..... 3926
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Duties of comptroller in relation to school fund 3924	Same 3926b
Same 3924a	Shall report to governor..... 3927
	Shall not with fund pay other claims.... 3928

Article 3921. The governor, secretary of state and comptroller 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 them shall constitute a quorum for the transaction of business.

Board of education, how organized.
(Acts of 1884, p. 41, §11; amend. 1893, p. 182.)

Art. 3922. The state superintendent shall be ex officio secretary of the state board of education, and shall keep a complete record of all its proceedings, which shall be signed by the president of the board and attested by the superintendent.

Superintendent ex officio secretary.
Ib. §21.

Art. 3923. The state board of education shall, on or before the first day of August of each year, make an apportionment of the available school fund among the several counties of the state and to the several cities and towns constituting separate school organizations, according to the scholastic population of each, and the state superintendent shall deliver an abstract of such apportionment to the comptroller, and to each county superintendent or judge and president of the board of school trustees of each city or town that has control of the public schools, a statement of the amount apportioned to each county, city, or town, as the case may be; and he shall issue to the county treasurer of each county, and to the treasurer of the school fund of any city or town having control of the public schools, a certificate, with thirteen collection coupons attached, for the amount of the available school fund so apportioned to each county, city, or town, which certificate shall be signed by the governor as president

Shall make apportionment of available school fund, when and how.
(Acts of 1893, p. 182.)

of the board of education, countersigned by the comptroller of public accounts, and attested by the secretary.

Duties of
comptroller
in relation to
the school
fund.
(Acts of 1884,
p. 42, §24.)

Art. 3924. The comptroller shall keep a separate account of the available school fund arising from every source. He shall draw his warrant in favor of the treasurer of the school fund of each county, city, or town that has control of its public schools, in such sum as each is entitled to upon a pro rata distribution of the available school fund in the hands of the state treasurer, upon the presentation to him of a coupon, properly filled out and receipted by the said local treasurer.

Same.
Ib.

Art. 3924a. The comptroller shall, at the time the certificates of apportionment are issued, advise the county treasurer of each county of the amount which the county tax collector of his county is authorized to pay on coupon No. 1 to the said county treasurer, for the available school fund for the ensuing school year.

Shall make
reports to the
legislature.
Ib. §25;
amend. 1893,
p. 182.

Art. 3925. The comptroller 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 the several sources from which the same accrues, and which may be subject to appropriation for the establishment and support of public schools.

STATE TREASURER.

Duties of state
treasurer in
relation to
school fund.
(Acts of 1893,
p. 182.)

Art. 3926. The state treasurer shall receive and hold as a special deposit all moneys belonging to the available school fund, and keep an account of the several sources from which they accrue. He shall open and keep an account with every county, city, or town in the state to which the board of education issues a certificate (showing them to be entitled to receive any portion of the available free school fund), wherein he shall credit each such county, city, or town with the amount apportioned to it by such certificate.

Same.
Ib.

Art. 3926a. On the first day of each month the state treasurer shall set apart to each county, city or town such a portion of the available free school fund as has come into his hands during the preceding month, as is shown by the certificates held by them to be due to each, upon a pro rata distribution thereof, and he shall notify each local treasurer of the school fund, through the state superintendent of public instruction, of the amount which can be paid on the remaining coupons, until the whole amount of apportionment to each county or independent school district has been paid. Said money so set apart shall not be used by the state treasurer for any purpose other than to pay the warrant drawn by the state comptroller upon presentation of such coupons.

Same.
Ib.

Art. 3926b. Whenever the treasurer of the school fund of any such county, city or town shall present the comptroller's warrant to the state treasurer for payment, he shall pay to him such an amount as has been set apart under the provisions of this law to such county, city or town, and no more; and shall pay from time to time, when demanded, such sums of money as have been so set apart to the treasurer of the school fund of such county, city or town, taking his receipt therefor. The state treasurer shall also charge the various counties, cities and towns in their respective accounts with the amount or amounts so paid, and shall also, at the time of payment, endorse upon the back of such warrant the amount paid, the date when paid, and sign the same officially. When the whole amount of such certificate therefor has been paid, it shall be by such treasurer

of the school fund presenting it receipted in full and delivered to the state comptroller.

Art. 3927. The treasurer shall, thirty days before each regular session of the legislature, and ten days before any special session at which any legislation can be had respecting the public schools, report to the governor the condition of the permanent and available school fund, the amount of each, and the manner of its disbursement, and he shall also make any additional report required by the board of education.

Shall report to the governor. (Acts of 1884, p. 43, §27.)

Art. 3928. The treasurer shall not under any circumstances use any portion of the permanent available school funds in payment of any warrant drawn against any other fund whatever.

Shall not with school fund pay any other claim. Ib. §28.

CHAPTER NINE.

COUNTY SCHOOL OFFICERS.

Article	Article
County superintendent—term of office and qualifications, etc.....3929	Shall apportion fund to districts, etc.....3934
County judge ex officio county superintendent3929a	School funds not transferable.....3934a
Commissioners' court may abolish.....3930	Compensation3935
Bond3932	To make quarterly reports of the funds.....3936
Compensation3933	Copy to be sent to superintendent of public instruction3937

Article 3929. The office of county superintendent of public instruction is hereby created, and the commissioners' court of any county in the state may, when in their judgment it may be advisable, provide for the election of a county superintendent of public instruction at each general election, who shall be a person of educational attainments, good moral character, and executive ability, a qualified voter of said county, and the holder of a first grade teacher's certificate, who shall hold his office for the term of two years, and until his successor is elected and qualified; and said commissioners' court, when they so provide for the election of a county superintendent, shall appoint a county superintendent of public instruction, with the qualifications above provided, who shall perform the duties of such office until a county superintendent shall have been elected as hereinbefore provided, and shall have qualified.

County superintendent—term of office, qualifications, etc. (Acts of 1893, p. 182.)

(a) Such county superintendent of public instruction shall have, under the direction of the state superintendent of public instruction, the immediate supervision of all matters pertaining to public education in his county. He shall confer with and counsel teachers and trustees, visit and examine schools, deliver lectures on topics calculated to excite an interest in public education. He shall organize and hold, with such assistance as may be necessary, at least three institutes of two days each during the school year; provided, that a failure to comply with this requirement shall be sufficient cause for his removal from office. He shall have authority to hold more than three institutes during the school year, if in his opinion the educational interests of his county demand more.

His duties.

(b) Such county superintendent of public instruction, before entering upon the discharge of his duties, shall take the oath of office prescribed by law, and shall enter into a bond in the sum of five thousand dollars, with good and sufficient sureties, to be approved by the county commissioners' court, and to be filed with the county clerk of his county, and said bond shall be made payable to

Shall take oath and file bond.

the county commissioners' court and their successors in office, in trust for the available school fund of the county, and be conditioned for the faithful performance of the duties of his office. In case said bond is forfeited and collected, the sum so collected shall become a part of the available school fund of the county.

Other duties. (c) He shall approve all vouchers legally drawn against the school fund of his county. He shall examine all contracts between the trustees and teachers of his county, and if in his judgment such contracts are proper, he shall approve the same; provided, that in considering any contract between a teacher and trustees he shall be authorized to consider the amount of salary promised to the teacher. He shall discharge such other duties as may be prescribed by the state superintendent. He shall distribute all school blanks and books to the officers and teachers of the public schools. He shall make such reports to the state superintendent as may be required by that officer. He shall immediately after qualifying appoint a county board of examiners, consisting of three resident white teachers holding first grade certificates, who shall serve during the pleasure of the county superintendent of public instruction, subject to the provisions hereinafter made.

Compensation. (d) The county superintendents of public instruction herein provided for shall receive from the available school fund of their respective counties annual salaries as follows: For each county with a scholastic population of two thousand or more, and not exceeding three thousand, he shall receive an annual salary of eight hundred dollars; for each county with a scholastic population of three thousand or more, and not exceeding four thousand, he shall receive nine hundred dollars; for each county with a scholastic population of four thousand or more, and not exceeding five thousand, he shall receive one thousand dollars; for each county with a scholastic population of five thousand or more, he shall receive twelve hundred dollars. The compensation herein provided for shall be paid quarterly by the county treasurer on the order of the commissioners' court; provided, that the salary for the quarter ending on the second Monday in November shall not be paid until the county superintendent presents a receipt from the state superintendent of public instruction showing that he has made all reports required of him.

County judge ex officio county superintendent in certain counties. Art. 3929a. In each county in this state having no school superintendent the county judge shall be ex officio county superintendent of public instruction, and shall perform all the duties required of the county superintendent in this chapter.

Commissioners' court may abolish. (Acts of 1893, p. 182.) Art. 3930. The county commissioners' court of any county in this state shall have the power and authority, when in their judgment such court may deem it advisable, to abolish the office of county superintendent of public instruction in their county by an order entered on the minutes of their court at a regular term thereof. Whenever such office is abolished the county superintendent shall serve out the term for which he was elected, and at the expiration of his term he shall turn over the books, papers, records, and other school property in his possession to the county judge, who shall thereafter perform the duties of county superintendent.

COUNTY JUDGES.

[Note.—Article 3931 defines the duties of the county judge as county superintendent. It is not embraced in the act of 1893, evidently in view of article 3930, which imposes upon him the duties of the county superintendent. But not being repealed it is retained.]

Art. 3931. The county judge, or the county superintendent, if there be one, shall have, under the direction of the state superintendent, the immediate supervision of all matters pertaining to public education in his county. He shall confer with and counsel teachers and trustees, visit and examine schools, deliver lectures on topics calculated to excite an interest in public education, or secure some one to do so. He shall organize and hold teachers' institutes, and shall approve all vouchers against the school fund of his county. He shall examine all contracts between teachers and trustees, in both district and community counties, and if in his judgment such contracts are proper he shall approve the same. He shall discharge such other duties as may be prescribed by the state superintendent. He shall distribute all school blanks and books to the officers and teachers of the public schools. He shall make such annual reports to the state superintendent as may be required by that officer; provided, that in considering whether he will approve a contract between a teacher and trustees he shall be authorized to consider the amount of salary promised the teacher.

Duties of school officers. (Acts of 1891, p. 97, §43.)

Art. 3932. The county judge shall give a bond in the sum of one thousand dollars, to be approved by the county commissioners' court and filed with the county clerk, said bond to be made payable to the county commissioners' court and their successors in office, and conditioned for the faithful performance of his duties. He shall also take the oath of office prescribed by the constitution.

Bond. (Acts of 1884, p. 46.)
Ib. §44.

Art. 3933. The county judge who serves as ex officio county superintendent of public instruction shall be entitled to the following compensation: For five hundred dollars or less of the school fund actually disbursed by the county treasurer annually, beginning September first, twenty-five dollars shall be allowed such judge; for five hundred dollars and not exceeding one thousand dollars so disbursed annually, fifty dollars shall be allowed; and for each additional one thousand dollars or fractional part thereof so disbursed annually, ten dollars shall be allowed to such judge; and ten per cent on the salary thus allowed shall be added for postage, stationery, and printing expenses connected with the administration of the school law. Such compensation shall be paid to the county judge by the county treasurer out of the public school fund of the county upon the approval of his voucher by the commissioners' court, in the same manner and upon the same conditions as provided in this chapter for the payment of the salaries of county superintendents.

Compensation. (Acts of 1891, p. 98; amend. 1893, p. 182.)

Art. 3934. The county superintendent, upon the receipt of the certificate issued by the board of education for the state fund belonging to his county, shall apportion the same to the several school districts (not including the independent school districts of the county), making a pro rata distribution as per the scholastic census, and shall at the same time apportion the income arising from the county school funds to all the school districts, including the independent school districts of the county, making a pro rata distribution as per scholastic census.

Shall apportion school fund to the districts, etc. (Acts of 1893, p. 182.)

Art. 3934a. Except as herein provided, no part of the school fund apportioned to any district or county shall be transferred to any other district or county; provided, that districts lying in two or more counties, and situated on the county line, may be consolidated for the support of one or more schools in such consolidated district; and in such case the school funds shall be transferred to the county in which the principal school building for such consolidated district

School funds not transferable. Ib.

is located; and provided further, that all the children residing in a school district may be transferred to another district, or to an independent district, upon such terms as may be agreed upon by the trustees of said districts interested.

COUNTY TREASURERS.

Compensa-
tion.
ib.

Art. 3935. The treasurers of the several counties shall be treasurers of the available public free school fund, and also of the permanent county school fund for their respective counties. The treasurers for the several counties shall be allowed for receiving and disbursing the school funds one-half of one per cent for receiving and one-half of one per cent for disbursing, said commissions to be paid out of the available school fund of the county upon an order of the commissioners' court approving the account of such treasurer; provided, no commissions shall be paid for receiving the balance transmitted to him by his predecessor, or for turning over the balance in his hands to his successor; and provided further, that he shall receive no commissions on money transferred or invested.

Bond.

(a) Within twenty days after the receipt of a certificate of his election, it shall be the duty of the county treasurer to execute a bond, with two or more good and sufficient sureties, payable to the county judge and his successors in office, for the faithful performance of his duties under this chapter; said bond shall be an amount equal to the probable amount of available school fund and of the permanent county fund which may come into his hands, to be estimated by the county superintendent, or county commissioners' court in counties having no superintendent, and shall be made payable and conditioned as prescribed by the general law.

Duties.

(b) Upon receipt of the certificate from the state board of education, duly countersigned by the comptroller, showing the pro rata of the available school fund to which his county is entitled under the apportionment, the county treasurer shall present coupon No. 1 to the collector of taxes for his county, who shall pay to the county treasurer, on the first day of each month, all school taxes that have come into his hands during the preceding month, until the comptroller's coupon draft on the collector is paid up.

Same.

(c) The treasurer shall endorse the amounts so paid by the collector on the proper coupon, and shall also execute and deliver to the collector duplicate receipts, countersigned by the clerk of the county court, for such payments, and when the whole amount of such coupon 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 paid in his settlement with the comptroller of public accounts. In case the state school tax shall not suffice to pay off the apportionment to the county, the county treasurer shall, on receipt of notice from the state superintendent of the amount which can be paid by the state treasurer on the apportionment to his county, enter upon the proper coupon the amount so signified, and present the same for collection to the comptroller of public accounts. When the entire amount of the apportionment to the county shall have been paid the county treasurer shall deliver the certificate of apportionment, receipted in full, to the state comptroller.

Same.

(d) The county treasurer, upon receiving notice from the state superintendent of the amount apportioned to his county, shall report the same to the county superintendent, who shall immediately apportion the same to the several districts, according to the scholas-

tic census, and the county superintendent shall immediately notify the county treasurer of the amount apportioned to each district. It shall also be the duty of the county treasurer to keep a separate account with each district, showing the amount apportioned according to the certificate of apportionment, and the amount paid out to each school and district; provided, in no case shall the county treasurer pay out any part of the school fund without the approval of the county superintendent.

(e) All balances of the general fund not appropriated for the current year shall be carried over by the treasurer as part of the general fund for the county for the succeeding year, and unexpended balances to the credit of any district shall be carried over for the benefit of such school district; provided, that if any such balance shall exceed five dollars per capita, according to the last scholastic census, then such excess over five dollars per capita shall be reapportioned to the school districts of the county. Same.

(f) All schools, both white and colored, in the same district shall be maintained the same length of time each year, as near as may be.

Art. 3936. It shall be the duty of the county treasurer of each county and the city treasurer or treasurer of the school board of each city or town having exclusive control of its schools to report the disbursement of the school fund, state and county, to the commissioners' court of his county. Said report shall be made at the first regular term of the commissioners' court after the thirty-first of August of each year or at the end of the school year, and shall consist of a complete exhibit of all moneys received and paid out by him, to whom paid, upon what voucher, and what moneys, if any, remain in his hands. To make regular reports of the fund. (Acts of 1888, p. 6, §1.)

Art. 3937. When such report shall have been examined and approved by the commissioners' court it shall be the duty of the county treasurer to immediately transmit a copy of such report, including a statement of the status of the permanent county school fund, certified to by the county clerk, to the superintendent of public instruction at Austin; provided, that city treasurers and treasurers of city school boards having exclusive control of its schools shall not be required to include in their reports statements of the status of the permanent county school funds. Copy to be sent to superintendent of public instruction. Ib. §2; amend. 1893, p. 182.

[Note.—For penalty for failure to comply with the foregoing articles, see Penal Code.]

CHAPTER TEN.

SCHOOL DISTRICTS.

Article	Article
Commissioners' court to divide counties	Who entitled to vote.....3942
into districts.....3938	How vote may be challenged.....3943
To levy special tax.....3938a	Second election held, when.....3944
Elections.....3938b	Ballots.....3944a
Districts, how made.....3939	Same.....3944b
Application for local tax, how made	Levy, when to be made.....3945
Duty of commissioners, etc.....3940	Trustees to make contract with teacher,
To appoint officers to hold election for,	how.....3946
etc.....3941	

Article 3938. It shall be the duty of the county commissioners' court of all organized counties, not already subdivided, to subdivide their respective counties into convenient school districts by the first day of September, 1893, or as soon thereafter as practicable, and Commissioners' courts to divide county into school districts. (Acts of 1895, p. 182.)

counties hereafter organized shall be subdivided before the beginning of the next ensuing school year. Said courts shall designate said school districts by numbers; provided, that when districts are once established they shall not be changed without the consent of a majority of the legal voters in all districts affected by such change. But two or more adjacent school districts may, by a majority of the qualified voters of each district, and with the approval of the county superintendent, be consolidated, and in such case the county superintendent shall designate such consolidated district by suitable number. The commissioners' court of any organized county to which any unorganized county is attached for judicial purposes may, and upon the written petition of not less than ten resident citizens of such unorganized county shall, create such unorganized county into one or more school districts, and shall cause an order to that effect to be entered upon the minutes of said court.

To levy
special tax.
Ib.

Art. 3938a. The commissioners' court of the several counties of this state shall have power to levy a special tax for the further maintenance of public free schools and the erection within each school district of school buildings therein; provided, two-thirds of the qualified property tax paying voters of the district voting at an election to be held for the purpose, shall vote such tax, not to exceed in any year twenty cents on the one hundred dollars valuation of the property subject to taxation in such district.

Elections.
Ib.

Art. 3938b. All polls for school district elections shall be opened at 10 o'clock a. m., and shall not be closed before 4 o'clock p. m., and none of the officers holding such election shall be entitled to compensation therefor.

How made.
Ib.

Art. 3939. Said school districts shall be so made as to be as convenient as possible to the scholastic population, and said courts shall give the metes and bounds of each district, and shall designate the same carefully by giving the whole surveys and parts of surveys, with acreage of whole surveys and approximate acreage of parts of surveys in each district, and the county clerk shall carefully record the same; and each district shall be given a number, which number shall be painted in large letters or figures over the doors of the school houses, said signs to be provided by the district trustees of each district.

DISTRICT TAXATION.

Application
for local tax,
how made.
(Acts of 1891,
p. 84.)

Art. 3940. Whenever twenty or more qualified property tax paying voters of any district, or a majority of the property tax paying voters in any district, wish, for the purpose of taxing themselves for the building of school houses or supplementing the state school fund apportioned to said district, shall make application to the county commissioners' court, duly signed by them, said court shall enter upon an order for an election to be held in said district to determine whether such tax shall be levied or not; said application shall designate the amount of tax asked to be levied, and the order of said court shall state—

1. When said election shall be held.
2. At what point or points the polls shall be opened.
3. The amount of tax to be voted on.

Duty of com-
missioners'
court.

Provided, that no election shall be held to determine the levy of a tax exceeding twenty cents on the one hundred dollars valuation of property. The commissioners' court shall order the sheriff to give notice of such election by posting three notices in the district for

three weeks before the election, and the sheriff shall obey such order. Not more than one such election shall be held in the same scholastic year.

Art. 3941. The county commissioners' court shall appoint a presiding officer for such voting place to hold such election, who shall make due return thereof as is required by law for holding a general election, and all persons who favor taxation for school purposes shall have written or printed on their tickets "For school tax," and all persons opposed to such taxation shall have written or printed on their tickets "Against school tax."

Court to appoint officers to hold election. (Acts of 1884, p. 49, §32; amend. 1895, p. 182.)

Art. 3942. All persons who are legal qualified voters of this state and of the county of their residence and who are resident property taxpayers in said district, as shown by the last assessment roll of the county, shall be entitled to vote in any such school district; and if at any such election two-thirds of such qualified voters voting at such election shall vote for the tax, it shall be declared by the county commissioners' court to have carried in said district, and be so entered upon the records of said court to have been carried; and in all cases the returning officer shall make a full and complete return, as in other elections, to said court within five days after said election is held, and said return shall be opened and counted at the first meeting of said court, and the result declared.

Who entitled to vote in school election, etc. Ib. §33; amend. 1895, p. 182.

Art. 3943. Any one person may challenge a voter, but if the challenged party takes an oath that he is a qualified voter of the state and county, and that he is a resident property taxpayer in said district, he shall be entitled to vote.

Voter may be challenged. Ib. §34; amend. 1893, p. 182.

Art. 3944. At any time after the expiration of two years after any district has levied a school tax on itself, twenty property tax-paying qualified voters, or a majority of such voters of the district, may have an election held upon the proper petition to the commissioners' court, to determine whether such tax shall be abrogated, increased or diminished. Such election shall be held and conducted as elections provided for in article 3941 of this chapter, and persons entitled to vote at such election shall possess the qualifications prescribed in article 3942 of this chapter.

Second election may be held, when. Ib. §38; amend. 1893, p. 182.

Art. 3944a. If the election be to abrogate or diminish the school tax, each voter favoring the abrogation or diminution shall have written or printed upon his ticket, "For abrogating school tax," or "For diminishing school tax to ——— cents," as the case may be; and each voter opposing the abrogation or diminution shall have written or printed on his ballot, "Against abrogating school tax," or "Against diminishing school tax to ——— cents," as the case may be, and a majority vote shall be necessary to abrogate or diminish the school tax.

Ballots. (Acts of 1893, p. 182.)

Art. 3944b. If the election be to determine whether the tax shall be increased, each voter favoring the increase of the school tax shall have written or printed on his ballot, "For increase of school tax," and those opposing such increase shall have written or printed on their ballots, "Against increase of school tax;" and if two-thirds of the votes cast be in favor of increasing the tax, it shall be increased.

Same. Ib.

Art. 3945. The county commissioners' court shall, at the time of levying the tax for county purposes, also levy upon each school district the amount of taxes said district has voted upon itself, and it shall be the duty of the tax assessor to assess the same as other taxes, and to make an abstract showing the amount of special tax assessed against each school district in his county, and to furnish the same to

Levy, when to be made. Ib.

the county superintendent, on or before the first day of September of the year for which such taxes are assessed; and the taxes levied upon the real property in said district shall be a lien thereon, and the same shall be sold for unpaid taxes in the manner and at the time of sales occur for state and county taxes. A special tax voted in any district after the levy of county taxes shall be levied at any meeting of the commissioners' court prior to the delivery of the assessment rolls by the assessor. The tax assessor shall assess and the tax collector shall collect said district taxes as other taxes. The tax assessor shall receive a commission of one per centum for assessing such tax, and the tax collector a commission of one per centum for collecting the same. The tax collector shall pay all such taxes to the county treasurer, and said treasurer shall credit each school district with the amount belonging to it, and pay out the same as other school moneys.

Trustees to make contracts with teachers, for what period. (Acts of 1893, p. 182.)

Art. 3946. Trustees of districts shall make contracts with teachers to teach the public schools of their respective districts, but the compensation to teachers under written contract with the trustees shall be approved by the county superintendent before the school is taught, stating that the teacher will teach such school for the time and money specified in the contract; and the board of trustees shall have authority, whenever the average daily attendance exceeds thirty-five pupils, to employ one competent assistant to every thirty-five pupils of such excess, and fractional part thereof exceeding fifteen pupils; and all children within the scholastic age residing in such district, though they may have settled in such a district since the scholastic census was taken, shall be entitled to receive all the benefits of the schools of such district; and in districts that levy a special school tax the trustees shall have the right to increase the salaries of teachers and the scholastic age, and may also have the schools taught longer than six months if it is deemed advisable.

Districts lying in two or more counties may be formed, how. (Acts of 1895, p. 163.)

Art. 3946a. Whenever the people living near a county line desire to organize a school district lying partly within two or more counties, a petition setting forth the boundaries of the proposed district, signed by a majority of the qualified voters within said boundaries and approved by the county superintendent (or ex officio county superintendent) of public instruction of each county in which any part of the proposed district lies, shall be presented to the commissioners' court of any of one of said counties, and said commissioners' court shall have authority to establish such school district according to said petition.

Pupils and apportionment, etc. Ib.

Art. 3946b. When such school district is so established it shall be regarded and treated in all respects as a district of the county by whose commissioners' court it is established; provided, that the children of scholastic age living in each county shall be reported separately to the proper county authorities and apportionments for such pupils shall be made by the several counties as to other children of the same counties, but the funds apportioned to such children shall all be transferred during each school year to the county whose commissioners' court established the district; and provided, further, that when any such school district authorizes the levy of a local school tax by a vote of tax payers the returns of the election shall be made to the commissioners' court of the county establishing the district, and when the result of the election is declared the county clerk shall transmit to the commissioners' court of each of the other counties interested notice of the result and of the rate of tax, if any, authorized. And the commissioners' court of each county shall levy, the

assessor shall assess, and the collector shall collect the tax separately for the portions of the district in their respective counties, but the funds so derived shall all be transferred to the county whose commissioners' court established the district.

Art. 3946c. County line communities may also be organized, including the residents of two or more community counties residing within three miles of the county line, upon petition to the county superintendent of public instruction of either county, in which case all the funds prorated to the children belonging to such community shall be transferred to the county whose county superintendent establishes the community.

County line communities may be formed, how. Ib.

CHAPTER ELEVEN.

SCHOOL COMMUNITIES.

Article	Article
Parents may unite to form, etc.....3947	How appointed3955
How organized.....3948	To employ a teacher, when.....3956
What petition shall set forth.....3949	How contracts to be made.....3957
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May organize with different sexes.....3951	Number of schools to be determined...3959
Child not on petition may be assigned, how3952	Trustees to employ and dismiss teachers3959a
Election and term of office.....3953	Children over and under age.....3960
Elections, how held.....3953a	May employ assistant teacher.....3961
Trustees of district body politic and incorporate3954	Salary, how provided.....3962
	Races to be taught separately.....3963

[Note.—Articles 3947 to 3952 inclusive were not embraced in the act of 1893, which from context appears to have been designed to supersede the school laws down to chapter 15. Quære: How are these articles, and others omitted, affected by the repealing clause of said act?]

Article 3947. Schools in counties governed by community system shall be organized as follows, and subject to the following provisions of this chapter; provided, the general provisions of this chapter govern when not in conflict with the special provisions hereof as to community system. It shall be lawful for the parents, guardians or other persons having control of any children, residing in any county governed by the community system, 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.

Parents may unite to form, etc. (Acts of 1884, §72.)

Art. 3948. The bona fide residents of this state, desiring 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.

How organized. Ib. §73.

Art. 3949. Such petition shall set forth—

1. That the application is made in behalf of a white or colored community, as the case may be.

What petition shall set forth. Ib. §74.

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 said community is being formed.

Duty of county judge upon receipt of petition.
Ib. §75.

Art. 3950. 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 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.

May organize with different sexes.
Ib. §76.

Art. 3951. 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 on petition may be assigned, how.
Ib. §77.

Art. 3952. 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 such school fund of the county.

TRUSTEES IN DISTRICT COUNTIES.

Election and term of office. (Acts of 1887, p. 122; amend. 1893, p. 182.)

Art. 3953. On the first Saturday in June after the passage of this law the qualified voters of each school district, at a school district meeting for that purpose, shall elect three trustees for said district, who shall enter upon the discharge of their duties on the first day of July next following. They shall immediately thereafter organize by electing one of their number president and one secretary of the board of trustees. The terms of office of said trustees shall be divided into two classes, and they shall draw for the different classes; the one drawing number one shall serve for one year, and those drawing numbers two and three shall serve for two years, and until their successors shall have been elected or appointed and

shall have qualified. On the first Saturday in June of each year thereafter there shall be an election in each school district for the election of a trustee or trustees, as the case may be, and the trustee or trustees so elected shall serve for two years, and until their successor or successors shall have been elected or appointed and shall have been qualified. The trustees so elected or appointed shall, before entering upon the discharge of their duties, qualify by taking the oath to faithfully perform their duties, and shall immediately file said oath with the county superintendent or county judge.

Art. 3953a. The commissioners' court shall appoint three persons, qualified voters of the district, to hold such election, who shall make returns thereof to the county superintendent within five days after such election shall have been held; and if no election be held, or if a vacancy occur in the board of trustees by death or otherwise, the county superintendent shall at once appoint a trustee or trustees, as may be necessary, for the full or unexpired term. If, at the time and place for holding such election, any or all of the persons so appointed to hold such election are absent or refuse to act, then the electors present may select of their number a person or persons to act in the place of those absent or refusing to act. No person shall be eligible to serve as a school trustee who can not read and write, and has not been a resident of the school district for six months prior to election held for trustees.

Election, how held.
(Acts of 1893,
p. 182.)

Art. 3954. The trustees of school districts provided for in the preceding articles of this chapter and their successors in office shall be a body politic and corporate in law, and shall be known by and under the title and name of district trustees of district number ——— and county ———, state of Texas, and as such may contract and be contracted with, sue and be sued, plead or be impleaded in any court of this state of proper jurisdiction, and may receive any gift, grant, donation or devise made for the use of the public schools of the district. All reports and other official papers shall be headed with the number of district and name of county.

Trustees of district to be body politic.
(Acts of 1884,
p. 49, §37.)

TRUSTEES IN COMMUNITY COUNTIES.

Art. 3955. 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 state superintendent, 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.

How appropriated.
(Acts of 1884,
p. 47, §78.)

Art. 3956. 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 a 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.

Duty to employ a teacher.
Ib. §79.

GENERAL PROVISIONS REGULATING THE DUTIES OF TRUSTEES.

How con-
tracts are to
be made.
Ib. §79a.

Art. 3957. Trustees shall make contracts with teachers, and in making them shall base their contract with the teachers on the basis of the number of pupils within scholastic age registered in the community; provided, however, that should the attendance fall below thirty-three and one-third per cent of the registered pupils in such community, the trustees thereof may discontinue the school.

[Note.—The three foregoing articles, 3955, 3956, and 3957, are not embraced in the act of 1893.]

What shall be
considered in
making con-
tracts.
Ib. §79b.

Art. 3958. 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 first class certificates, not more than two dollars and fifty cents; to those holding second class certificates, not more than two dollars; and to such as hold third class certificates, not more than one dollar and fifty cents per month per capita shall be allowed for pupils within the 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 of pupils of scholastic age; provided, that in no event shall teachers holding permanent certificates receive from the public free school fund more than eighty-five dollars per month, or those holding first grade certificates receive from the public free school fund more than seventy-five dollars per month, and those holding second grade certificates more than sixty dollars per month, and those holding third grade certificates more than forty dollars per month; provided, that this restriction shall not apply to salaries of teachers in districts which levy a local tax for school purposes.

To determine
how many
schools to be
established,
etc.
Ib. §53;
amend. 1893,
p. 182.

Art. 3959. School trustees shall determine how many schools shall be maintained in their respective school districts, and at what points they shall be located; they shall determine when the schools shall be opened and when closed; they shall contract with teachers and manage and supervise the schools subject to the rules and regulations of the county and state superintendents. They shall approve all teachers' vouchers and all other claims against the school fund of their district; provided, that trustees of districts in making contracts with teachers shall not create a deficiency debt against the district.

Trustees to
employ and
dismiss
teachers.
(Acts of 1893,
p. 182.)

Art. 3959a. The trustees of school districts shall have the management and control of the public schools; they shall have the power to employ and dismiss teachers, but in cases of dismissal, teachers shall have the right of appeal to the county and state superintendents.

Children over
and under age
admitted,
how.
Ib. §58;
amend. 1893,
p. 182.

Art. 3960. The trustees of schools shall have the power to admit pupils over and under scholastic age, either in or out of the district, on such terms as they may deem proper and just; provided, that in admitting pupils over and under the scholastic age the school shall not be overcrowded, to the neglect and injury of pupils within the scholastic age; and they may suspend from the privileges of schools any pupil found guilty of incorrigible conduct, but such suspension shall not extend beyond the current term of the school.

May employ
assistant
teachers.
Ib. §79c.

Art. 3961. Trustees may employ one or more assistant teachers whenever the average daily attendance exceeds thirty-five pupils. The teacher shall be entitled to pay for pupils over and under age at such rates as the trustees may prescribe. If the necessity for the em-

ployment 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 teacher.

[Note.—Article 3961 is not embraced in the act of 1893.]

Art. 3962. 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 superintendent. 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.

Salary, how paid.
Ib. §79d.

Art. 3963. White and colored children shall not be taught in the same schools, but impartial provision shall be made for both races. Three white trustees shall in all cases be elected for the control and management of the white schools of the district, and three colored trustees shall be elected for the control and management of the schools for colored children. The election for white and colored trustees shall be held at the same time and places, and the ballots cast for white trustees shall be deposited in a separate box from that used for the ballots cast for colored trustees. The returns of the election shall be made to the county judge, who shall deliver the same to the commissioners' court to be canvassed and the result declared as in cases of other county elections. The returns shall show distinctly the separate votes for white and colored trustees, and the county clerk shall certify to the county superintendent the white and colored trustees elected for each district, and the county superintendent shall issue the commissions of trustees. Each year after the scholastic census of the county is completed, the county superintendent shall, if any district has less than twenty pupils of scholastic age, either white or colored, have authority to consolidate said district as to said white or colored schools with other adjoining districts, and to designate the board of trustees which shall control the white or colored school of such consolidated district. But this shall be done before the apportionment is made, and the apportionment shall be made with respect to such consolidation. The white trustees of each district shall be the trustees of the district for all purposes having relation to the management or control of the white schools, and the fund apportioned for their support, and the colored trustees shall be the trustees for all purposes in reference to the management or control of the colored schools and the funds apportioned for their support. The apportionment to the white and colored schools of each district shall be made in the following manner: The county superintendent, upon the receipt of the certificate issued by the board of education for the state fund belonging to his county, shall apportion the same to the several school districts (not including the independent school districts of the county), making a pro rata distribution as per the scholastic census, and shall at the same time apportion the income arising from the county school funds to all the school districts, including the independent school districts of the county, making a pro rata distribution as per scholastic census. Within thirty days after said apportionment is made by the county superintendent of education, the white and colored boards of trustees of such district shall, if possible, agree upon a division of the funds of the district between the white and colored schools, and shall fix the term for which the schools of the district shall be maintained for

White and colored children to be taught separately.
(Acts of 1895, p. 29.)

the year. Should they agree upon a division of the funds of the district or upon the length of the term for which the schools of the district shall be maintained, they shall at once certify their agreement to the county superintendent, who shall not approve any contract with teachers of the district until said agreement is received. Should said boards of trustees fail to agree upon a division of the funds of the district or upon the length of the term for which the schools of the district shall be maintained, they shall at once certify their disagreement to the county superintendent, who shall proceed to fix the school term of such district and declare the division of the school fund of the district between the white and colored schools therein, endeavoring, as far as practicable, to provide for the schools of such district a school term of the same length.

CHAPTER TWELVE.

SCHOOL CENSUS.

	Article		Article
How taken and returned	3964	Assessors' fees due, when.....	3968
Duty of assessor.....	3965	Shall be verified.....	3969
What census shall show.....	3966	To make two abstracts.....	3970
Other duties of assessor.....	3967	Compensation of assessor.....	3971

Census, how taken and returned, when. (Acts of 1895, p. 182.)

Article 3964. The scholastic census shall be taken by the district trustees, or one of them, under the supervision of the county superintendent, of all children in their district between the ages of eight and seventeen years, giving name, age, color, sex, and the name of the parent or guardian, as may be directed by the state superintendent of public instruction, and return the said list to the county superintendent by the first Monday in June in each year, and the trustees so taking said census shall be paid five cents per capita out of the school fund of their respective districts. The trustees are hereby authorized and empowered to administer all oaths necessary to obtain a full, complete, and correct census of all children residing in their respective districts; and said trustees may require each parent, guardian, or other person having in charge any child or children, to answer, under oath, as to the names and ages of such child or children, and any person refusing to answer such questions, under oath, shall be guilty of a misdemeanor, and on conviction thereof shall be fined not less than five nor more than twenty-five dollars. The county superintendent shall, by the first Monday in July thereafter, aggregate the whole number of children in the county, and make an abstract in duplicate thereof, one to be filed with the county clerk, and the other to be forwarded by him to the state superintendent. Said census rolls shall be sworn to by the trustees taking the census, and said abstracts by the county superintendent, before any officer authorized to administer oaths.

COMMUNITY SYSTEM.

Duty of assessor. (Acts of 1884, p. 55, §80.)

Art. 3965. It shall be the duty of the assessor of taxes for each and every county in this state not operated under the district system, 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 sixteen years on the first day of September next succeeding the taking of such census.

Art. 3966. Such census shall state the name of the child, his or her age, sex or color. What census shall show. Ib. §81.

Art. 3967. For the purpose of ascertaining the facts required by the preceding article to be placed 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. Other duty of assessor. Ib. §82.

Art. 3968. 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 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. No fee to assessor until roll is returned. Ib. §83.

Art. 3969. 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 of each year. Shall be verified. Ib. §84.

Art. 3970. It shall 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 superintendent, and upon the approval thereof by the county judge, to mail the same on or before the first day of July to the state superintendent. Assessor to make two abstracts. Ib. §85.

Art. 3971. The assessor shall receive as compensation for taking such census and making 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. Compensation of assessor. Ib. §86.

[Note.—Articles 3965 to 3971 inclusive are not embraced in the acts of 1893.]

CHAPTER THIRTEEN.

BOARDS OF EXAMINERS AND TEACHERS.

Article	Article
County board of examiners, qualifications, etc. 3972a	Applicant falling on examination..... 3976b
Preliminaries to examination..... 3973	Promotion in grades..... 3976c
Qualifications of teacher..... 3973a	English to be the language of use... 3976d
State certificates 3973b	Shall keep daily registers..... 3977
County certificates 3973c	Who exempt from examination..... 3978
Examinations of teachers..... 3973d	State certificates 3979
Applicants examined as to what..... 3974	State certificates 3979a
Same 3974a	City board of examiners authorized to issue, when 3980
Grading papers 3974b	Certificate, where valid 3981
Duty of county superintendent..... 3974c	Valid certificates 3981a
Duty of state examiners..... 3974d	Examinations 3981b
Teachers to attend normal school..... 3975	Applicant must show what..... 3981c
Salaries 3976	Transfers on county line..... 3982
Duties of county superintendent..... 3976a	Transfers by county judge, when..... 3983

Article 3972. There shall be in each organized county of this state a county board of examiners. Said board shall be composed of three members, to be appointed by the county superintendent; provided, that in counties having no county superintendent the coun- County board of examiners; qualifications, etc. (Acts of 1895, p. 182.)

ty judge shall appoint a county board of examiners. The persons so appointed shall be teachers residing in the county for which they are appointed, holding first grade county certificates, or certificates of some higher rank, which certificates shall be valid in the county for which said persons are appointed at the time of appointment; provided, that if the services of such persons can not be secured the superintendent may appoint other qualified persons residing in the county for which they are appointed. The members of the county board of examiners shall serve during the pleasure of the county superintendent of the county for which they are appointed. Said board of examiners shall meet at the call of the county superintendent, and the presence of all the members of the board shall be necessary to the transaction of business. If at any meeting of the board any member thereof is absent, the county superintendent shall appoint some other person, possessing the qualifications hereinbefore mentioned, to supply the place of the absent member, either temporarily or permanently, as he may deem proper.

Preliminaries
to examina-
tion.
Ib.

Art. 3973. Any person desiring to be examined for a county certificate shall make application to the county superintendent, stating the class of certificate desired, and shall present him a certificate of three good and well known citizens, or such proof as he may require, of all the qualifications, except the examination grades, required for the class of certificate desired. After investigation, the county superintendent shall give the applicant a written recommendation to the board of examiners, requiring them to examine the applicant for a certificate of such class, if any, as they may find the applicant entitled to upon making the necessary examination grades. But no person shall receive such recommendation without first depositing with the county superintendent the sum of three dollars as an examination fee, and the recommendation given by the superintendent shall show the receipt of the examination fee. The board of examiners shall in no case permit any person to enter upon the examination without first presenting the written recommendation of the county superintendent.

Qualifications
of teacher.

Art. 3973a. No person shall receive a certificate of any class without first showing to the satisfaction of the county superintendent that he is a person of good moral character, and his ability to speak and understand the English language sufficiently to use it easily and readily in conversation, and in giving instruction in all branches prescribed for the class of certificate for which he applies. The county superintendent, unless he knows the fact personally, shall require satisfactory proof of the applicant that he has ability to use the English language as above provided, before issuing his recommendation to the board of examiners, and the examiners shall also consider it as an element in determining his grades upon the branches upon which he is examined.

Certificates,
state.

Art. 3973b. Teachers' certificates authorizing the holders thereof to contract and teach in the public free schools of this state shall be of three kinds, as follows:

A county certificate, to be valid only in the county in which it is issued.

A city certificate, to be valid only in the city in which it is issued.

A state certificate, to be valid in all the counties and independent districts of the state. All valid teachers' certificates now in force shall be good for the time for which they were issued.

Art. 3973c. County certificates shall be of four classes, as follows: Certificates, county.

A third grade certificate.

A second grade certificate.

A first grade certificate.

A permanent certificate.

County certificates shall be issued by the county superintendent of public instruction upon the recommendation of the county board of examiners hereinbefore provided; and the county superintendent shall keep a record of all certificates issued by himself and of other certificates held by persons teaching in the public free schools of his county, who shall present such certificates for record before their contracts shall be approved, which record shall show the name, age, sex, and color of the holder of each certificate, and the kind and class of the certificate, the length of time for which it is valid, and by whom issued.

Art. 3973d. The county board of examiners of each county shall, if necessary, hold an examination on the third Friday and the Saturday following of each month of the year, except January, March, May, and July. Said board of examiners shall use the questions prescribed by the state superintendent of public instruction, and shall conduct the examinations in accordance with the rules and regulations prescribed by the county superintendent and state superintendent of public instruction. Examinations of teachers. Ib.

Art. 3974. An applicant for a third grade certificate shall be examined in spelling, writing, arithmetic, English grammar, geography, Texas history, elementary physiology and hygiene and the laws of health, with special reference to narcotics, and school management and methods of teaching. A third grade certificate shall be valid for one year from the date of issue, and to receive such certificate the applicant shall, upon examination, make on the prescribed subjects an average grade of not less than seventy, and on each prescribed subject a grade of not less than fifty; provided, that a third grade certificate shall not in any case be good except in the county where issued. Applicants examined, in what. Ib.

(1). An applicant for a second grade certificate shall be examined in the subjects prescribed for a third grade certificate, and, in addition thereto, in United States history, elementary principles of civil government, English composition, physiology and hygiene, and physical geography. A second grade certificate shall be valid for two years from the date of issue, and to receive such certificate the applicant shall, upon examination, make on the prescribed subjects an average grade of not less than seventy-five, and on each subject of not less than fifty; provided, that if the applicant make a general average on the prescribed subjects of eighty-five, and on each subject a grade of not less than fifty, the certificate shall be valid for four years.

(2). An applicant for a first grade certificate shall be examined in the subjects prescribed for third and second grade certificates, and, in addition thereto, in physics, algebra, elements of geometry, the constitution of the United States and the state of Texas, and elements of mental and moral science, and the effects of tobacco and alcoholic intoxicants upon the human system. A first grade certificate shall be valid for four years; provided, if the holder thereof shall withdraw from school work for a period of two years or longer, such certificate shall become void; and to receive such certificate the applicant, upon examination, shall make upon the prescribed

subjects an average grade of not less than eighty-five, and on each subject a grade of not less than fifty; provided, that a first grade certificate shall be valid for two years if the applicant makes a grade of not less than fifty on any subject, and a general average of seventy-five.

Same.
(Act of 1895,
p. 188.)

Art. 3974a. An applicant for a permanent certificate shall be examined upon the branches prescribed for third, second and first grade certificates, and in addition thereto in the history of education, general history, psychology, English and American literature, chemistry, solid geometry, plane trigonometry and elementary double entry bookkeeping. A permanent certificate shall be valid during good behavior of the holder; provided, that if any person holding a permanent certificate shall withdraw from the school work for a period of three years or longer, such certificate shall become void, and it shall be the duty of the county superintendent or the state superintendent, if the certificate be a state certificate, to cancel the same upon the records of his office. To receive a permanent certificate the applicant shall be a teacher of not less than three years successful experience in the schools of Texas, and upon examination shall make upon prescribed subjects an average grade of not less than eighty-five, and on each prescribed subject a grade of not less than fifty; provided, further, that all certificates that have heretofore been issued by county superintendents or county judges without the favorable recommendations of the county boards of examiners after examining the applicants on the subjects prescribed by law, are hereby declared null and void, and the same are hereby cancelled and declared of no force.

Grading
papers.
Ib.

Art. 3974b. The board of examiners shall grade the papers of the applicants on the basis of one hundred credits for a perfect paper, and endorse on each paper, in ink, the number of credits allowed on each answer, and the average (total) on the paper, and shall make to the county superintendent a separate report, under oath, on the examination of each applicant, which shall show the names of the members of the board conducting the examination, and the number of credits allowed upon each subject, and shall, if they believe that the applicant has fairly observed the rules prescribed for the examination, and if the applicant has made the grades and average required, recommend that he shall receive a certificate of such class, if any, as he may be entitled to, and shall deposit his papers with the county superintendent.

Duty of
county su-
perintendent.
Ib.

Art. 3974c. The county superintendent shall, upon the request of any applicant for second (grade), first (grade), or permanent certificate, made in writing, before the adjournment of the board of examiners, forward to the state superintendent, to be submitted to the state board of examiners, hereinafter provided, such applicant's papers and the report of the county board of examiners thereon, together with one dollar of the fee deposited with him; provided, that this shall not in any manner interfere with the issuance of the proper county certificate to said applicant.

Duty of state
examiners.

Art. 3974d. The state board of examiners shall, at their next meeting after the receipt of said papers and report, together with said fee of one dollar, examine said papers and report thereon, and if they believe that the papers are fairly and accurately graded, they shall make a report to the state superintendent, and shall recommend that the county certificate issued upon said examination be made valid in all the counties of the state, and they shall notify said

applicant of their action, who may forward his county certificate to the state superintendent of public instruction, who may issue in lieu thereof another certificate of equal rank, valid in all the counties of the state, and the state superintendent shall preserve a record of certificates thus issued by him.

Art. 3975. It shall be the duty of all teachers in the public schools of this state to attend the summer normal and county institutes as far as possible.

Teachers to attend normal schools.
Ib.

Art. 3976. Teachers may receive salaries not exceeding the following sums: Teachers with first grade certificates, seventy-five dollars per month; teachers with second grade certificates, fifty dollars per month; teachers with third grade certificates, thirty dollars per month; provided, that this restriction shall not apply to the salaries of teachers in districts that levy a local tax for school purposes. Teachers shall admit all children over and under the scholastic age into the public schools upon such terms as may be agreed to by teachers and trustees; provided, that in admitting pupils over and under the scholastic age, the school shall not be over crowded, to the neglect and injury to pupils within the scholastic age.

Salaries.
(Acts of 1891,
p. 184, §5.)

[Note.—Article 3976 is not embraced in the act of 1893.]

Art. 3976a. The county superintendent shall not act as a member of the county board of examiners. He shall collect the examination fees, and after paying out of the funds so received the expense of the examination and making the necessary remittances, if any, to the state superintendent for the state board of examiners, shall distribute the remainder among the members of the county board of examiners conducting the examination.

Duties of county superintendent.
Ib.

Art. 3976b. An applicant who takes the examination for a certificate of any class and fails to pass, may receive a certificate of any lower rank to which the examination grades on the subjects prescribed for such certificate of lower rank may entitle him.

Applicant failing on examination, etc.
Ib.

Art. 3976c. Any person holding a second grade or first grade certificate may, within one year after the date of issue, receive in lieu thereof a certificate of the next higher class by taking the examination on the additional subjects prescribed for such higher class certificate; provided, that such applicant's average grade on all subjects prescribed for such higher class certificate, as shown by both examinations, shall not be less than hereinbefore fixed, and the minimum grade on any subject shall not be less than that hereinbefore provided; and provided further, that said applicant shall possess all the other qualifications required by law for persons receiving such certificate of such higher grade.

Promotion in grade.
Ib.

Art. 3976d. It shall be the duty of every teacher in the public free schools of this state to use the English language exclusively, and to conduct all recitations and school exercises exclusively in the English language; provided, that this provision shall not prevent the teaching of any other language as a branch of study, but when any other language is so taught, the use of said language shall be limited to the recitations and exercises devoted to the teaching of said language as such branch of study.

English to be the language of use.
Ib.

Art. 3977. Teachers shall keep daily registers, in which the names, ages and studies of the pupils and their attendance shall be recorded, and such other matters as may be prescribed by the state superintendent. Said registers shall be open to the inspection of all

Shall keep daily registers.
Ib. §6.

parents, school officers and other persons who may be interested, to examine the same.

1. All teachers shall make monthly reports on such subjects as may be designated by the state superintendent or county superintendent, to be approved by a majority of the trustees of the district, and shall file the same with the county superintendent when they present their vouchers for their month's salaries.

2. They shall make such reports at the end of the school term as may be prescribed by the state superintendent, and until such term reports are made the trustees shall not approve vouchers for last month's salaries, nor shall county treasurers pay the same. All monthly and term reports shall be made under oath, and county superintendents are hereby empowered to administer oaths for such purposes. County superintendents and county judges shall receive no compensation for administering oaths necessary in transacting any business relating to school affairs.

Who exempt
from examin-
ations.
Ib. §7.

Art. 3978. Teachers holding a diploma from a Texas state normal school, or from the Peabody Normal School at Nashville, Tennessee, or the North Texas Normal College of Denton, Texas, or Coronal Institute at San Marcos, Texas, may teach in the public schools of this state during good behavior, and such diplomas shall rank as permanent state certificates; and such teachers shall not be subject to examination by any board of examiners; provided, that the state board of education, together with the state superintendent of public instruction, shall prescribe the course of study which teachers shall complete in the North Texas Normal College and Coronal Institute, before their diplomas from the same shall have the force of life certificates, and that the said board and state superintendent shall further prescribe a course of study for the said schools, the completion of which shall entitle the person so completing the same to a first grade state certificate; provided further, that the state board of education, or the state superintendent of public instruction, in order to enforce their requirements as to course of study, methods, and discipline, shall have the authority to visit the said schools, and to inspect the character of work, methods of instruction, and discipline, and to hold examinations of persons applying for diplomas or certificates from said schools. A teacher holding a first grade certificate from a Texas state normal school may teach in the public schools in this state for four years after issuance, and a teacher holding a second grade certificate from such an institution may teach in the public schools of the state for two years, and shall not be subject to examination by any board of examiners. A teacher holding a Texas summer normal certificate may teach anywhere in the state for four years, and shall not be subject to examination by any board of examiners. The state superintendent shall prescribe regulations for the holding of summer normal institutes, and prescribe rules for granting summer normal and permanent certificates, which shall be state certificates.

State certifi-
cate. ●
Ib. §8.

Art. 3979. Any teacher who may have had two years' experience in teaching, and who shall pass satisfactorily an examination prescribed by the state superintendent, and shall make a grade of not less than sixty per cent in any one branch and an average grade of not less than seventy per cent, shall be entitled to a state certificate, good throughout the state of Texas for a period of three years from date of issuance. If he shall make an average grade of not less than seventy per cent, and not less than seventy per cent in any one

branch, he shall receive a certificate which shall be good throughout the state for a period of five years from date of issuance. If he shall make an average of not less than ninety per cent and not less than seventy per cent in any one branch, he shall receive a state certificate good throughout Texas for a period of ten years or during good behavior. And during the time in which the certificate provided for in this article is specified as valid the teacher holding the same shall not be subject to examination by any board of examiners. The state superintendent shall prepare a uniform set of questions for these examinations. He shall prescribe the time, place and manner of holding these examinations. The answers to all questions shall be forwarded to the department of education at Austin and shall be examined and graded by a state board of examiners, consisting of not less than five competent teachers, appointed by the state superintendent. Any person desiring to enter this examination shall present to the district board of examiners a certificate evidencing that he is of good moral character, and said certificate shall accompany his examination papers. Three persons in each senatorial district shall be appointed by the state superintendent, who shall constitute the district board of examiners and shall hold annual examination in that district. They shall certify that all the rules and regulations and directions of the state superintendent have been fully and faithfully complied with; they shall transmit all papers to the state superintendent on close of examination.

1. Before entering the examination each teacher shall pay to the district board of examiners the sum of three dollars, two dollars of which shall be retained by the district board in payment of their services and one dollar shall be forwarded to the state superintendent at Austin, to be used in paying the state board of examiners for their services; provided, that this fee shall in all cases be paid in advance, and shall in no case be refunded. These certificates shall rank as first grade certificates.

2. All examinations shall be conducted in the English language in writing and written with ink, and shall be held in the following branches: Reading, writing, spelling, arithmetic, algebra, plane and solid geometry, plane trigonometry, grammar, rhetoric, English literature and composition, United States, Texas and general history, geography, including map drawing, physical geography, physiology, natural philosophy, chemistry, civil government, school management and methods of teaching, and elementary psychology.

[Note.—Article 3979 is not embraced in the act of 1893.]

Art. 3979a. University diplomas and certificates given by the university of Texas to students of the school of pedagogy, shall have the force and effect of state certificates, as follows:

State certificate.
(Act of 1893,
p. 182.)

1. Diplomas conferred by the regents of the university of Texas on students completing some degree course, and also the degree course of the school of pedagogy, shall have the force of permanent state certificates.

2. Certificates issued by the school of pedagogy to students completing the advanced course, or the special professional course, or the graduate course, shall have the force of first grade state certificates for four years.

3. Certificates issued by the school of pedagogy to students completing the junior course shall have the force of state certificates of the first grade for a period of two years.

City board of examiners authorized to issue certificates. (Act of 1893, p. 182.)

Art. 3980. A city or town which has five hundred scholastic population or more, and has become an independent school district, and which levies a local tax for educational purposes, or maintains a system of free schools for nine months each year, and which has employed a superintendent of city schools, may have a city board of examiners. Said board of examiners shall in all cases consist of a city superintendent of the city schools, together with two other persons, who shall be appointed by him, and who shall be teachers, and the superintendent shall not be subject to examination. The city board of examiners are hereby authorized to issue certificates valid only in the city in which they are issued. Such certificates shall be of two kinds, as follows:

A temporary certificate.

A permanent certificate.

Temporary and permanent certificates shall be of three classes for each kind, as follows:

Primary teacher's certificate.

Intermediate teacher's certificate.

High school teacher's certificate.

A temporary certificate shall be good for any period not exceeding four years, to be determined by the board of trustees of such city or town. A permanent certificate shall be good during good behavior, and shall not be issued to any person who has not been engaged successfully in teaching in the schools of Texas for a period of at least three years. A teacher holding a primary teacher's certificate may teach in the primary school or primary grades. A teacher holding an intermediate teacher's certificate may teach in the intermediate school or intermediate grades. A teacher holding a high school teacher's certificate may teach in the high school or high school grades. The further regulation of the issuance of such certificates shall be provided for by the boards of trustees of such cities or towns; provided, that no city or town shall make the requirements for its temporary primary or temporary intermediate certificates inferior to the requirements prescribed by law for second grade county certificates, or the requirements for its temporary high school certificates less than those prescribed by law for first grade county certificates, or the requirements for its permanent certificates less than those prescribed by law for permanent county certificates. Nothing in this chapter shall interfere with the validity of outstanding certificates in such cities and towns, or prevent the extension of such certificates for a period not to exceed four years. Cities and towns authorized by the provisions of this chapter to have a city board of examiners, may, at the discretion of the superintendent of the city schools, employ a teacher of any special branch not included in the requirements for a state certificate, without requiring an examination or a teacher's certificate; and nothing in this chapter shall prevent the board of trustees of any such city or town from recognizing the certificates issued in any other such city or town in this state, and validating the same in the city or town so recognizing them.

State board of examiners. Ib.

Art. 3980a. The state superintendent of public instruction shall be authorized to appoint a state board of examiners, consisting of not less than three competent teachers, living in the state, to serve during his pleasure, and he may increase or decrease the number, as varying conditions may make necessary.

Certificate, where valid. (Acts of 1891, p. 186.)

Art. 3981. A county certificate shall be valid only in the county in which it is issued. A city certificate shall be valid only in the city

in which it is issued. A summer normal certificate, a state certificate, a certificate from a Texas state normal school, a diploma from a Texas state normal school or the Peabody normal at Nashville, Tennessee, shall be valid anywhere in Texas. Certificates shall be valid for the time they are issued, unless cancelled by the authority issuing the same for good cause shown. Any teacher who may hold a diploma conferring on him the degree of bachelor of arts, bachelor of science, or any higher academic degree from any college or university of the first class, and who shall have taught for a period of not less than five years in Texas, may, upon the payment of a fee of five dollars, which shall be placed to the credit of the state available school fund, receive from the state superintendent of public instruction a certificate of the first grade, which shall be valid anywhere in this state during good behavior.

[Note.—Article 3981 is not embraced in the act of 1893.]

Art. 3981a. Any teacher who may hold a diploma conferring on him the degree of bachelor of arts, bachelor of science, bachelor of letters, or any higher academic degree, from any college or university of the first class, and who shall have taught for a period of not less than three years in Texas, may receive from the state superintendent of public instruction a permanent state certificate, which shall be valid anywhere in this state during good behavior. The institutions to be recognized as colleges or universities of the first class shall be determined by the state superintendent of public instruction, upon the recommendation of the state board of examiners.

Valid
certificates.
(Acts of 1893,
p. 182.)

Art. 3981b. All examinations authorized under this chapter shall be conducted in the English language and in writing, and no applicant shall receive a certificate unless the board of examiners be satisfied that he is competent to teach the branches prescribed for the grade of certificate applied for, in the English language. All examinations for white and colored teachers shall be conducted in separate rooms or buildings. Any certificate may be cancelled for good cause by the authority issuing it, and the state superintendent of public instruction shall have power to cancel any certificate upon satisfactory evidence that the holder thereof is conducting his school in violation of the laws of the state; provided, that before any certificate shall be cancelled the holder thereof shall be notified, and shall have an opportunity to be heard, and he shall have the right of appeal from such decision to the state superintendent, and to the state board of education; provided, that when the state superintendent shall have cancelled the certificate, the appeal shall be to the state board of education.

Examinations
Ib.

Art. 3981c. Any teacher desiring to teach in any city, town, or district in this state, shall, before contracting with any board of trustees, or with any city school board, exhibit a teacher's certificate, valid in the city, town, or school district; and any teacher who shall teach in any public school in this state without having a valid certificate, shall not receive from the free school funds any compensation for such service.

Applicant
must sho
what.
Ib.

TRANSFERS.

Art. 3982. Any child lawfully enrolled in any district or independent district may be transferred to the enrollment of any other district or independent district in the same county, upon the written application of the parent or guardian or person having the law-

Transfers on
county lines.
(Acts of 1893,
p. 182.)

ful control of such child, filed with the county superintendent, at any time before the apportionment of the school fund by the county superintendent or county judge of any scholastic year, but not afterwards; and no child shall be transferred more than once. Upon the transfer of any child its portion of the school fund shall follow and be paid over to the district or independent district to which such child is transferred; provided, no transfers shall be made after the trustees have employed a teacher.

County judge may transfer, when. (Acts of 1887, p. 123, §42.)

Art. 3983. The county judge may, at any time before he apportions the school fund among the several districts or communities, transfer a child from one district or community to another in the same county, and in every such case he shall transfer the pro rata share of such child in the school fund to the district or community in which said child shall be taught. After the completion of said apportionment no transfer shall be made, but all children within the scholastic age who have not attended any public school in the state during the current scholastic year shall be allowed to attend free of charge any public school in any district or community in which such children have acquired a residence. The county judge shall also have authority, on the recommendation of the school trustees, to consolidate one school with another in the same district or adjoining districts, and to transfer money from one school to another school in the same district or adjoining district.

[Note.—Article 3983 is not embraced in the act of 1893.]

CHAPTER FOURTEEN.

SCHOOL HOUSES.

Article	Article
Available fund to be used, how.....3984	May sell property, when.....3990
Application to be accompanied by plans and specifications, etc.....3985	May lease house, when.....3991
County judge to make order, etc.....3986	Houses and other property to be under control of whom.....3992
Trustees to contract for the building, etc.3987	Separate houses for the races.....3993
No builder's lien allowed.....3988	Children entitled to be enrolled.....3993a
Fund to be used in discretion of county judge, etc.3989	Children eligible; counties exempt from district system3993b

Available fund to be used, how. (Acts of 1895, p. 182.)

Article 3984. When a school district has no school house, or not a sufficient number, or when the school houses are in need of repairs or furniture, the trustees may contract for the building or repairing of a school house or school houses, or the purchase of furniture, and may use for such purposes not more than twenty-five per cent annually of the school fund of the district for a period of five years; provided, that where a house is to be erected, the citizens of the district must contribute of their labor or means, or both, an amount equal to one-third of the school fund to be so used, and a suitable piece of land shall be donated as a site, and a deed therefor shall be executed and delivered, conveying a good and sufficient title in fee simple in and to such 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; and provided further, that districts which have taxed or may hereafter tax themselves, may be allowed to use the money raised by such taxation for the purpose of purchasing, repairing, enlarging, erecting, or furnishing school buildings, or to purchase building sites, but the title to all real estate so purchased shall be taken and recorded as hereinabove provided.

Art. 3985. The trustees of the district must make application to the county superintendent for any appropriation for the purposes named in the preceding section before making any contract with any teacher for the year in which such appropriation is desired, which application shall be accompanied with plans and specifications of the house or houses sought to be erected, with a statement of the estimated cost, or in case of desired repairs or furniture, a detailed statement of the repairs or furniture desired, together with an estimate of the cost of the same.

Applications must be accompanied by plans and specifications.
Ib.

Art. 3986. After receipt of such application the county superintendent, if it appears to his satisfaction that the house to be erected is necessary and adapted to the needs of the pupils of the district, or that the repairs or furniture desired is necessary, and that the requirements of law have been complied with, shall make an order appropriating such amount of the school fund to the credit of such district for each year as he may deem expedient, necessary, and proper for the purposes specified in such application; but in making any such appropriation for a district, the scholastic interests of the district as a whole shall be considered; and no part of such appropriation shall be drawn from the treasury or paid until the completion of the building or repairs according to contract, plans, and specifications, or in case of furniture, until the delivery thereof, according to such contract as the trustees may have made, and then only upon the warrant of the county superintendent.

County judge to make the order appropriating money to build, etc.
Ib.

Art. 3987. The trustees of such school district shall contract for the erection of such building and superintend the construction of the same, and the county superintendent shall draw his warrant or warrants upon the school fund so appropriated only upon the accounts first approved by them.

Trustees to contract for the building.
Ib.

Art. 3988. 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 lien allowed.
Ib.

Art. 3989. So much of the available school fund of any school district for any one year, not to exceed twenty-five per cent of said fund, as the county superintendent may deem expedient, necessary, and proper, may be used in the purchase of suitable school property upon the terms and conditions hereinbefore specified.

Fund to be used at discretion of judge.
Ib.

Art. 3990. The trustees of any school district, upon the order of the commissioners' court, prescribing the terms thereof, when deemed advisable, may make sale of any property belonging to said school district, and apply the proceeds to the purchase of necessary grounds or to the building or repairing of school houses, or place the proceeds to the credit of the available school fund of the district.

Maysell property, when.
Ib.

Art. 3991. The trustees of any school district 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 school fund of the district, upon the warrant of the trustees, approved by the county superintendent.

May lease house, when.
Ib.

Art. 3992. All school houses erected, grounds purchased or leased for a school district, and all other property belonging thereto, shall be under the control of the district trustees of such district.

Houses and other property to be under control of trustees.
Ib.

Art. 3993. A school house constructed in part by voluntary subscriptions by colored parents or guardians, and for a school for col-

Separate houses for the races.
Ib.

ored children, shall not be used for white children without the consent of the trustees of the district, 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.

Children entitled to be enrolled.
Ib.

Art. 3993a. In taking the scholastic census, every child that will be of scholastic age at the beginning of the next school year shall be enrolled and enumerated in the district in which it resides at the time of its enumeration.

Children eligible to the public schools; counties exempt from district system.
Ib.

Art. 3993b. Every child in this state of scholastic age shall be permitted to attend the public free schools of the district or independent district in which it resides at the time it applies for admission, notwithstanding that it may have been enumerated elsewhere, or may have attended school elsewhere part of the year; provided, that white children shall not attend the schools supported for colored children, nor shall colored children attend the schools supported for white children; provided, that the following counties shall be and the same are hereby exempted from the district system provided in this act, to-wit: Freestone, Limestone, Robertson, Van Zandt, Smith, Montgomery, Trinity, Cass, Bowie, Bosque, Lee, Burleson, Washington, Bastrop, Cameron, Hidalgo, Nacogdoches, Panola, Rusk, Brazoria, Matagorda, Wharton, Raines, Shackelford, Callahan, Guadalupe, and Angelina; provided, that any county exempted from the district system may be transferred from the community system to the district system by the commissioners' court of said county passing an order to that effect, and in such case it shall be the duty of the county clerk to notify the state superintendent of public instruction of such action; and nothing herein contained shall be construed to repeal any of the laws now in force as to said counties for the government of schools in counties under the community system, but said laws are hereby expressly continued in full force and operation in the counties above specified.

CHAPTER FIFTEEN.

FREE SCHOOLS IN TOWNS AND VILLAGES.

Article	Article
May incorporate for school purposes only, how3994	County judge to order election of trustees, when3993
Trustees may levy and collect the tax.....3995	Power of trustees.....4000
Election ordered by trustees, when....3996	Organization, etc.4001
Notice of election, etc.....3997	Duties of assessor, etc.....4002
Who may vote.....3998	Bond and compensation of treasurer, etc.4003

Towns and villages may incorporate for free school purposes only, how. (Acts of 1891, p. 79.)

Article 3994. Towns and villages authorized to incorporate under this chapter, or having two hundred inhabitants or over, not desiring to incorporate for municipal purposes, may incorporate for free school purposes only; provided, that the territory incorporated shall not exceed four miles square; and when so desiring an election may be held under the provisions of this title and chapter, and if at said election a majority of the votes cast be in favor of the corporation, it shall be the duty of the county judge to make return thereof and cause a record of the result of such election to be made; upon which entry being made such town or village shall be regarded as duly incorporated for the purpose of establishing and maintaining a free school therein, and shall, upon notice to the state board of education by the board of trustees hereinafter provided for, receive

such pro rata share of the available school fund as its scholastic population may entitle it to; and all towns and villages heretofore incorporated under the provisions of this article as it heretofore existed, but which incorporation is invalid by reason of having incorporated more territory than a radius of two miles from the center of said town or village.

Art. 3995. Trustees of towns and villages that have been or may hereafter be incorporated for school purposes only, under act of the seventeenth legislature, approved April 6, 1881, shall have power to levy and collect an annual ad valorem tax of twenty-five cents on the one hundred dollars valuation of taxable property, for the purpose of purchasing or constructing public free school buildings and sites therefor, within the limits of such incorporated district, and said trustees shall have power to issue coupon bonds of the town or village therefor, to be made payable at a date not exceeding twenty years from date, in such sums as they shall deem expedient, to bear interest not to exceed six per cent per annum; provided, that the aggregate amount of bonds issued for the above named purposes shall never reach an amount when the tax of one-fourth of one per cent per annum will not pay current interest and provide a sinking fund sufficient to pay the principal at maturity; and provided further, that no such tax shall be levied and no such bonds shall be issued until an election shall have been held for the purpose of determining said question, whereat two-thirds of the taxpayers voting at said election shall have voted in favor of the levying of said tax or the issuance of said bonds, or both, as the case may be.

Trustees may levy and collect the tax. (Acts of 1881, p. 133.)

Bonds for school buildings.

Art. 3996. The election provided for in the preceding article may be ordered by the trustees on the written petition of at least twenty taxpaying voters of said towns or villages at any time not less than thirty days from the date of the order, which order shall state the date and place when said election shall be held, the amount of tax to be levied, or the amount of bonds to be issued, as the case may be, and the trustees shall also name and appoint therein the manager or managers of said election, which shall be held as nearly as may be possible in conformity with the general election law of the state; provided, that when a proposition to levy such a tax shall be defeated no election for that purpose shall be ordered until after the expiration of one year.

Election ordered by trustees, when. Ib. §2.

Art. 3997. Public notice of said election shall be given by the said trustees by placing notices of the same in three different portions of such incorporated district at least twenty days before said election, which notice shall state the time and place of the election, and the amount of the tax to be levied or the amount of bonds to be issued, or both, as the case may be.

Notice of election. Ib. §3.

Art. 3998. No person shall vote at said election unless he be a qualified voter under the constitution and laws of this state, and a taxpayer in such incorporated district, and those in favor of the levying of such tax or the issuance of such bonds shall write or print upon their ballots, "For the tax," and those against the levying of such a tax or the issuance of such bonds shall write or print on their ballots, "Against the tax;" and due returns thereof shall be made to said trustees within ten days, and the result thereof shall be recorded by the said trustees in a well-bound book to be kept for that purpose.

Who may vote. Ib. §4.

Art. 3999. Upon the entry of record, as provided for in the preceding article 3994, it shall be the duty of the county judge to forth-

County judge to order election for trustees, when. (Acts of 1881, p. 114.)

with order an election of five school trustees for such town or village so incorporated for school purposes, who shall be elected in the same manner and at the same time, and whose term of office shall be the same as that of trustees of districts.

Power of trustees.
Ib.

Art. 4000. The trustees elected in accordance with the preceding article shall be vested with the full management and control of the free schools of such incorporated town or village, and shall in general be vested with all the powers, rights and duties in regard to the establishment and maintaining of free schools, including the powers and manner of taxation, for free school purposes, that are now conferred by the laws of this state upon the council or board of aldermen of incorporated cities and towns.

Organization.
Ib.

Art. 4001. The board of trustees, when elected, shall organize by choosing from their number a president, a secretary, a treasurer, and an assessor and collector of taxes.

Duties of assessor and collector.
Ib.

Art. 4002. The assessor and collector of taxes shall have the same powers and shall perform the same duties, with reference to the assessment and collection of taxes for free school purposes that are conferred by law upon the marshal of incorporated towns and villages, and he shall receive such compensation for his services as the board of trustees may allow, not to exceed four per cent of the whole amount of taxes received, and he shall give bond for the faithful discharge of his duties in such amount as may be prescribed by the board of trustees.

Bond and compensation of treasurer.
Ib.

Art. 4003. The treasurer shall be required to give bond, payable to the state of Texas, to be approved by the board of trustees, for a sum equal to double the probable amount of taxes assessed, and the pro rata share of the available school fund, conditioned for the faithful discharge of his duties, and the payment of the funds received by him, upon the draft of the president, drawn upon order, duly entered, of the board of trustees, and for his services he shall be entitled to retain a commission of one per cent upon all amounts paid out by him.

CHAPTER SIXTEEN.

FREE SCHOOLS IN INCORPORATED TOWNS AND CITIES.

Article	Article
Cities and towns may assume control, when	Oath of trustees.....4020
Applicable to all cities and towns.....	May adopt rules, etc.....4021
How determined, etc.....	Powers of town council and board of aldermen
Mayor to order election, when.....	To receive pro rata of fund.....
Ex officio member of board, etc.....	Duty of council to submit question of taxation
Powers and duties, etc.....	Additional amount raised, when.....
Control and management, etc.....	Rate of tax for independent districts.....
Election resulting adversely, effect of.....	Tax to be levied, when.....
Compensation	Subject to general law
Property, how vested.....	May extend school age, when.....
Bond of treasurer.....	Census to be taken, by whom.....
To receive money direct, etc.....	Treasurers—powers, etc.
Mayor and council to levy and assess tax for schools, how.....	Title to land.....
To what cities applicable	Sale of property, etc.....
Board of trustees, how appointed.....	Bonds for school houses.....
Compensation and term of office.....	

Cities and towns may assume exclusive control of free schools, etc.

Article 4004. [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.

Art. 4005. Any city or town in this state may acquire the exclusive control of the public free schools within its limits.

Applicable to all cities and towns. (Acts of 1879, p. 76, §1.)

Art. 4006. The mayor of said city or town shall, upon the written application of not less than fifty of the qualified electors of such city or town, order, within twenty days of such application, an election by the qualified electors of such city or town, to be conducted as other municipal elections, to decide by a majority of the votes cast by the qualified electors of such city or town at such election whether such city or town shall acquire the exclusive control of any or all of the public free schools and institutions of learning within its limits, and whether the same shall be under the control of the board of trustees as hereinafter mentioned, or of the council or board of aldermen of such city or town.

How determined that city or town shall take charge of schools. Ib. §2.

Art. 4007. If at such election it shall be decided that such city or town has acquired the exclusive control of said public free schools and institutions of learning, and that the same shall be under the management of a board of trustees, then the mayor of such city or town shall, within ten days from the ascertainment of such result, order an election, to be conducted as other municipal elections, by the qualified electors of such city or town, of six trustees, to take charge of and manage said public free schools and institutions of learning. The six persons receiving the largest number of votes cast at such election shall thereupon become such trustees, and shall hold their offices for four years; provided, that at the first election held under the provisions of this chapter the trustees receiving the smallest majorities shall only hold their offices for two years, and at the end of every two years thereafter there shall be elected in like manner three trustees. Any vacancy from any cause whatever among said trustees to be filled by an election as herein provided for, for the unexpired term of such trustees; and provided further, that said trustees may continue to act until their successors may have qualified.

Mayor to order election, when. Ib. §3.

Art. 4008. The county judge of the county in which said city or town is situated, and the mayor of such city or town, shall be ex officio members of said board of trustees.

Ex officio member of board of trustees. Ib. §4.

Art. 4009. Said board of trustees may adopt such rules, regulations and by-laws for their own government as they may deem proper, and select their chairman, secretary, treasurer and other necessary officers.

Powers and duties. Ib. §5.

Art. 4010. Said board of trustees shall have and exercise exclusively the same powers, control, management and government of and over such public free schools and institutions of learning in such cities or towns as are now or hereafter may be by law conferred upon the council or board of aldermen of such cities or towns where such council or board of aldermen are invested with the control of such public free schools.

Shall control and manage. Ib. §6.

Art. 4011. Should the election provided for in article 4007 of this chapter result adversely to the acquisition of such control of the public free schools and election of a board of trustees, then no like application shall be entertained within two years.

Election resulting adversely, effect of. Ib. §7.

Art. 4012. The board of trustees herein provided for to act in the place of the council or board of aldermen in such cities or towns as may acquire the exclusive control of the public free schools and

Compensation. Ib. §8.

institutions of learning within their limits shall receive no compensation for their services.

Property, how vested. (Acts of 1889, p. 128.)

Art. 4013. In all cities and towns in this state which have assumed or may hereafter assume the exclusive control and management of the public free schools within their limits, and which have determined or may hereafter determine that such exclusive control and management of the public free schools within their limits shall be in a board of trustees, and organized under an act of the sixteenth legislature, approved April 3, 1879, and acts amendatory thereto, the title to all houses, lands and other property owned, held, set apart or in any way dedicated to the use and benefit of the public free schools of such city or town, including property heretofore acquired as well as that which may hereafter be acquired, shall be vested in the board of trustees and their successors in office in trust for the use and benefit of the public free schools in such city or town, and such board of trustees shall have and exercise the exclusive control and management of such school property, and shall have and exercise the exclusive possession thereof for the purposes aforesaid; provided, that where trustees are named, other than the municipal corporation itself, in any instrument conveying, donating, bequeathing or devising any money or other property, real or personal, for the benefit of any city or town, this law shall not interfere in any manner with the title or authority of such trustees to or over such money or other property. And such board of trustees shall constitute a body corporate and shall have full power to protect the title, possession and use of all such property within the limits of such city or town, and may bring and maintain such suit or suits in law or in equity in any court of competent jurisdiction, when necessary, to recover the title or possession of any such property that may be adversely held or seized, or to prevent any trespass upon or injury to such property, and the power and authority of any such board of trustees to bring and maintain any suit in relation to the recovery of such property or of the possession and use thereof; provided, that the provisions of this article shall not apply to lands belonging to the state upon which houses for school purposes have been built without authority from the state.

Powers and duties of trustees in regard to same.

Bond of treasurer. Ib. §2.

Art. 4014. The treasurer of the board of trustees of any such city or town, before entering upon the duties of his office, shall execute a bond with two or more good and sufficient sureties, payable to the state of Texas, and to be approved by such board of trustees, and in such sum as shall be fixed by said board of trustees, not less than one-half of the annual school revenues that shall come into his hands, conditioned that such treasurer will receive and disburse such school funds as shall come into his hands according to law, and that he will render a full and true account of all such funds.

Treasurer to receive money direct from state. Ib. §3.

Art. 4015. The pro rata of the available school fund of the state appropriated and set apart to such city or town shall be, by the proper officer or department of the state, paid over directly to the treasurer of the board of trustees, who shall execute the proper receipts therefor; and all moneys and funds arising from the assessment and collection of any special tax in such city or town for public free school purposes shall be by the assessor and collector, or the collector or other proper officer of such city or town whose duty it is to collect the taxes, turned over directly to the treasurer of the board of trustees of such city or town, who shall execute and deliver his receipt to such collector, and the mayor and council or board of

aldermen of such city or town shall have no power or control over such funds.

Art. 4016. In such cities and towns as have assumed the exclusive control of the public free schools within their limits, and have decided under the laws providing therefor that a special tax shall be levied for the support of such public free schools, the mayor and council or board of aldermen of such city or town shall annually assess and levy such tax by ordinance duly passed and approved in the same manner as is required in the assessment and levy of taxes for general purposes in such city or town. In cities and towns which have voted upon and directed the levy of a special tax not exceeding one-half of one per cent, the mayor and council or board of aldermen of such city or town shall annually levy such rate of taxes for public school purposes, not exceeding one-half of one per cent, as shall be sufficient for the support of the public free schools for the term as required by law, but in such cities and towns as have voted upon and decided at an election held for that purpose that a specified rate of taxes shall be assessed and levied in such city or town for the support of its public free schools, the mayor and council or board of aldermen of such city or town shall have no discretion in fixing the rate at which such tax shall be levied, but shall assess and levy the same at the rate fixed in the proposition as submitted and adopted by the qualified voters of such city or town at the election held for that purpose.

Mayor and council to assess and levy tax for schools as for general purposes.
Ib. §4.

Art. 4017. The provisions of the preceding articles 4013 to 4016 inclusive shall apply to cities organized under special charters or special acts of incorporation, but not to cities and towns organized and incorporated under the general law.

To what cities and towns applicable.
Ib. §5.

Art. 4018. The city council of every city or town of one thousand inhabitants or more, incorporated under the general law, that has or shall assume control of its public free schools, may appoint six persons of good moral character and qualified voters of such city or town, as a board of trustees for such schools, of which board the mayor shall be ex officio chairman.

Board of trustees, how appointed.
(Acts of 1883, p. 112, §1.)

Art. 4019. A trustee so appointed shall serve without compensation and shall hold his office for the term of three years or until his successor is qualified, and an appointment to fill a vacancy shall be for the unexpired term only. But the terms of two of the trustees first appointed under this chapter shall expire on the first Tuesday in April after their appointment, and two on the first Tuesday in April of each succeeding year.

Compensation and term of service.
Ib. §2.

Art. 4020. Before any trustee enters upon the discharge of the duties of his office, he shall swear that he will faithfully and impartially discharge the duties of such office and file such affidavit with the mayor.

Oath of trustee.
Ib. §3.

Art. 4021. Said board of trustees may adopt such rules, regulations and by-laws for their own government as they may deem proper. The public free schools of such city or town shall be under the control and supervision of such board of trustees, and said board when appointed shall have the exclusive power to control, manage and govern said schools.

Adopt such rules and regulations as deemed proper.
Ib. §4.

Art. 4022. [3783] The council or board of aldermen of such city or town, unless it has vested the exclusive management and control of its public free schools in a board of trustees, are invested with exclusive power to maintain, regulate, control and govern all the public free schools now established, or hereafter to be established,

Powers of town council and board of aldermen.
(Acts of 1879, p. 174; amend. 1895, Sen. Jour., p. 481.)

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. 4023. [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.

Duty of council to submit question of taxation.

Art. 4024. [3786] After a city or town has assumed control of the public free schools within its limits, as provided for in the act of May 7, 1875, 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 article 4025 shall be raised by taxation.

Additional amount may be raised by taxation, when.
Ib.
(Acts of 1879, extra session, ch. 53.)

Art. 4025. [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.

Rate of taxation for independent districts.
(Acts of 1881, p. 63.)

Art. 4026. The city or town council, or board of aldermen, of any city, town or village, whether incorporated under any act of the congress of the republic or the legislature of the state of Texas, or under any act of incorporation whatever, shall have power, by ordinance, to annually levy and collect not exceeding one-half of one per cent ad valorem taxes for the support and maintenance of public free schools in the city or town where such city or town is a separate and independent school district; provided, that no such tax shall be levied until an election shall have been held, at which none but property taxpayers, as shown by the last assessment rolls, who are qualified voters of such city or town, shall vote, and two-thirds of those voting shall vote in favor thereof. The proposition submitted may be for a tax not exceeding one-half of one per cent, or it may be for a specific per cent; one election, and no more, shall be held hereafter in any one calendar year to ascertain whether a school tax shall be levied; if the proposition is carried the school tax shall continue to be annually levied and collected for at least two years; and thereafter, unless it is discontinued, at an election held to determine whether the tax shall be continued or discontinued, at the request of fifty property taxpayers of such city or town; when the tax is continued no election to discontinue it shall be held for two years; when the tax is discontinued no election to levy a tax shall be held during the same year.

If the vote is favorable, tax to be levied annually thereafter.

Art. 4027. [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. 4028. [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. 4029. [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. 4030. [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. 4031. [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. 4032. [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. 4033. [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.

BONDS OF MUNICIPAL CORPORATIONS FOR BUILDING SCHOOL HOUSES.

Art. 4034. Towns and cities which have assumed or may hereafter assume control and management of the public free schools within their limits may also provide for building sites and buildings for such public free schools and institutions of learning in the manner and under restrictions and limitations provided in article 486, relating to cities and towns.

Bonds for school houses. (Acts of 1887, p. 37.)

TITLE LXXXVII.
The Public Lands.

CHAPTER ONE.
 PUBLIC DOMAIN.

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Vacant lands belong to state (Acts Dec. 14, 1837.)

• Article 4035. [3794] All the vacant lands are the property of the state and subject alone to the disposition of the proper authorities thereof.

H. D. 44-6. All public lands retained at annexation. (Joint res., June 23, 1845.)

Art. 4036. [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.

No reservation shall be made. (Const., art. 14, §3.)

Art. 4037. [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.

Forfeiture on failure to comply, etc. Ib.

Art. 4038. [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.

Same. Ib. §5.

Art. 4039. [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.

Proceedings to forfeit land donations. Ib.

Art. 4040. [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. 4041. [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.

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Article 4042. [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. 4043. [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.

Art. 4044. [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. 4045. [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. 7099kk.

Art. 4046. [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

Indorsement of filing papers. Ib. §2.
P. D. 7099ll.

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.

Clerk to be detailed, etc., when.
Ib.
P. D. 709911.

Art. 4047. [3806] When an examination is desired by any person other than an employe 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 examine papers after, etc.
Ib. §3.
P. D.
7099mm.

Art. 4048. [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.

Lithographic copies of maps to be printed. (Acts of 1879, p. 40.)

Art. 4049. The commissioner of the general land office is authorized to contract for the printing and delivery to him of lithographic copies of maps of the various counties of this state; provided, that the cost of such printing and delivery shall not exceed two cents per copy.

To be copyrighted.
Ib. §2.

Art. 4050. When said commissioner has prepared the official copy of the map of any county from which such lithographic copies are to be printed, he shall copyright the same in the name and for the benefit of the state of Texas, in accordance with the laws of copyright of the United States.

To be sold at 50 cents.
Ib. §3.

Art. 4051. When such copies are received by the commissioner he shall offer the same for sale at not less than fifty cents nor more than one dollar per copy, regulating the price by the amount of labor required in the original compilation of such maps and transcribing same; provided, that when a party desires to purchase at any one time one hundred or more copies of the maps of any county or counties, he shall be allowed a discount on the fixed price of the same of twenty per cent.

Proceeds to be placed in state treasury.
Ib. §4.

Art. 4052. All moneys received from the sale of maps, as above provided, shall be paid into the state treasury as are all other fees received by the general land office.

No transfers, etc., shall be withdrawn.
Ib. §4.
P. D. 7099nn.

Art. 4053. [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.
Ib. §5.
P. D. 7099oo.

Art. 4054. [3809] When the commissioner cancels a patent or permits the floating of certificates 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. 4055. [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.

Art. 4056. [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.

Certificate to be indorsed when patented.
Ib. §7.
P. D. 7099qq.

Art. 4057. [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 postoffice 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; and the commissioner shall keep a record of the date said notice was mailed and the name of the party to whom the notice was mailed and the name of the postoffice to which said notice was addressed; and the record of such entries shall be prima facie evidence of the facts therein stated, and the absence of such entries shall be prima facie evidence that the notice required above had not been given.

Notice to be given of forfeited survey. (Acts of 1881, p. 6.)

Art. 4058. [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.

Certificate to be delivered only to owner.
Ib. §8.
P. D. 7099rr.

Art. 4059. [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.

Before delivery to assignee, evidence of title to be filed.
Ib.

Art. 4060. [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.

When commissioner is in doubt, proof, how made.
Ib.

Art. 4061. [3816] No paper, certificate, copy or document, other than a patent, shall be delivered by the commissioner to the owner until he has receipted for the same, in which receipt shall be stated his place of residence, his postoffice, and, if delivered to the agent or attorney, shall state in addition his residence and postoffice, 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.

Receipts for papers, etc.
Ib. §9.
P. D. 7099ss.

Art. 4062. [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. 7099uu.

CHAPTER THREE.

LAND DISTRICTS.

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What counties are separate land districts.

Article 4063. [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.

When county becomes a land district, (Acts Jan. 26, 1858.)
P. D. 1082.

Art. 4064. [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 to have a surveyor.

Art. 4065. [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, and a record book of the field-notes of all surveys in the county.

"Land districts" defined.

Art. 4066. [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.

County or district failing to organize as separate land district. (Act Feb. 8, 1860.)
P. D. 1090.

Art. 4067. [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.

Unorganized counties attached for land purposes, etc. (Amend. 1895, Sen. Jour., p. 481.)

Art. 4067a. Each county in this state that is unorganized, or that has not so completed its organization as to become a separate land district under the requirements of the law, shall be attached to some organized county for surveying purposes, and the county surveyor of such organized county shall be the surveyor for the land district thus constituted, and the records of all files and surveys of land in such district shall be kept at his office.

Counties attached. Ib.

Art. 4067b. The land districts composed of more than one county are defined and the unorganized counties are attached for surveying purposes as follows:

(Act 1883.)

1. The counties of Armstrong, Carson and Randall are attached to Donley county.

(Act 1887.)

2. The counties of Andrews and Gaines are attached to Martin county.

Ib.

3. The counties of Bailey, Cochran and Hockley are attached to Crosby county.

(Acts 1883, 1889.)

4. The counties of Borden, Dawson, Lynn, Yoakum, Terry and Glasscock are attached to Howard county.

(Act 1883.)

5. The counties of Greer, Collingsworth, Hutchinson, Hansford, Ochiltree, Roberts, Hemphill and Lipscomb are attached to Wheeler county.

6. The counties of Crane, Ector and Upton are attached to Mid-land county. (Act 1889.)
7. The county of Lamb is attached to Baylor county. (Act 1881.)
8. The county of La Salle is attached to Nueces county. (Act 1874.)
9. The counties of Loving, Ward and Winkler are attached to Reeves county. (Act 1877.)
10. The county of Stonewall is attached to Young county. (Act 1876.)
11. The county of Schleicher is attached to Menard county. (Act 1887.)
12. The counties of Crockett and Edwards are attached to Bexar county. (R. S. 1879, art. 3833.)
13. The counties of Dallam, Moore, Parmer, Potter and Sherman are attached to Oldham county. (Act 1883.)
14. The county of Encinal is attached to Webb county. (Act 1885.)
15. The counties of Foley and Buchel are attached to Brewster county. (Act 1889.)
16. The counties of Garza and Kent are attached to Scurry county. (Act 1887.)
17. The counties of Irion and Sterling are attached to Tom Green county.
18. The county of Jeff Davis is attached to Presidio county.
19. The county of King is attached to Knox county. (Act 1887.)

CHAPTER FOUR.

COUNTY AND DISTRICT SURVEYORS.

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Article 4068. [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 office for two years and until his successor may be elected and qualified. County surveyor, when elected. (Const., art. 16, §44.) (Acts Jan. 26, 1858, p. 199; Aug. 19, 1876.)

Art. 4069. [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. Oath and bond required. (Act Dec. 14, 1837.) P. D. 1081, 4522.

Commissioners' court to fill vacancy. (Act Aug. 19, 1876, p. 219.)

Art. 4070. [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.

Duties of county surveyor. (Act Dec. 14, 1837, P. D. 4522.)

Art. 4071. [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.

Surveyor to report to commissioners' court as to inclosed school lands. (Acts of 1879, p. 101.)

Art. 4072. It shall be the duty of the surveyor of each county to make a report to the county commissioners' court on the first Monday in June each year of the number of sections of public school lands in his county inclosed during the past year, and the names of the person or persons controlling such inclosed lands, and the number of sections controlled by him or them respectively.

Shall record all field-notes in his district. (Acts of 1881, p. 71.)

Art. 4073. The surveyors of the several counties of this state shall record in a well-bound book all the surveys in the county or district for which he was elected, with the plats thereof that he may make, whether private or official, and such record shall be open to the inspection of the public; for which service the surveyor may charge, in addition to the fees now allowed by law for field work, twenty cents per hundred words for such record.

Shall plat surveys upon map, etc. (Act Jan. 26, 1853, P. D. 1087.)

Art. 4074. [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.

Record books furnished. (Act March 9, 1875; Feb. 2, 1860.)

Art. 4075. [3839] The commissioners' courts of the several counties shall furnish the county surveyors of their respective counties with the necessary books of record pertaining thereto.

Deputies appointed; oath and bond required, etc. (Act Dec. 14, 1837, P. D. 4522.)

Art. 4076. [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.

Art. 4077. [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 returning the same to the county surveyor.

Chain carriers and markers. (Act Dec. 14, 1837.) P. D. 4523.

Art. 4078. [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.

Deputy surveyors shall return field-notes. (Act Feb. 5, 1840.) P. D. 4112.

Art. 4079. [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.

County surveyor may do work of deputy. (Act Dec. 20, 1837.)

Art. 4080. [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.

Shall keep a map in his office for inspection. (Act Feb. 5, 1840.)

Art. 4081. [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.

Duty on change of boundary. (Act Feb. 5, 1840.)

Art. 4082. [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.

Contested elections, by what court tried. (Act Feb. 7, 1853.)

Art. 4083. [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.

Their duties, how regulated. (Act May 12, 1846.)

Art. 4084. [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. 4085. [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 dis-

Special county surveyor for unorganized county. (Act Jan. 26, 1858.) P. D. 1085.

trict, 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 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.

Deputy surveyor of new county to procure maps. (Act May 11, 1846.)
P. D. 4276.

Art. 4086. [3850] Deputy surveyors of the several new counties shall procure from the district surveyors of their respective districts, 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.

Surveys of deputy to be placed on map.
Ib.
P. D. 4277.

Art. 4087. [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 in unorganized counties. (Act Feb. 8, 1860.)
P. D. 1091.

Art. 4088. [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 out and noted on his records.

Special deputies, bond, etc.
Ib.
P. D. 1092.

Art. 4089. [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.

Surveyor not authorized to survey, until, etc. (Act Jan. 26, 1858.)

Art. 4090. [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.

Art. 4091. [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.

Art. 4092. [3856] Whenever the maps, field-notes of surveys or other records, or any part thereof, of the surveyor's office in any county or land district shall from any cause be lost or destroyed, or when any new county shall organize, or new land district is created, it shall be the duty of such county or district surveyor to obtain from the commissioner of the general land office a transcript of such maps, field-notes of surveys or other records of his office of his county or land district, certified to as required by law, and for obtaining which he shall be entitled to five cents per hundred words, and the state 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 original could have.

Art. 4093. [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.

Art. 4094. [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 the court house of their county.

Art. 4095. [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.

Art. 4096. [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 certificate 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.

Art. 4097. [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.

Art. 4098. [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.

Shall return field notes of new county. Transcript to be obtained from land office, when. (Acts of 1885, p. 92; amend. 1895, Sen. Jour., p. 482.)

Authorized to rent office. (Act Aug. 18, 1876, p. 196.)

Rent of office, how paid. Ib.

To have a deputy in office, when. (Act Feb. 25, 1863.) P. D. 1093.

Authority to survey. (Act Dec. 14, 1837.)

Conflicting claims settled by jury. Ib.

Right to examine books, etc. (Act Jan. 26, 1858.) P. D. 1086.

Right to demand statement, when. (Act Jan. 26, 1858.)
P. D. 1086.

Art. 4099. [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.

Transcripts, etc., by whom paid for. (Act March 20, 1848.)
P. D. 1078.

Art. 4100. [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 one 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.

Surveyors to establish true meridian, etc. (Act June 2, 1873, p. 173.)
P. D. 7099sss.

Art. 4101. [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.

Responsible for neglect or failure, etc. *Ib.*
P. D. 7099ttt.

Art. 4102. [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.

Shall turn over records, etc. (Act May 12, 1846.)
P. D. 4525.

Art. 4103. [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.

County clerk shall take charge of books, etc., when. (Act Oct. 18, 1866, p. 31.)

Art. 4104. [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 surveyors' office and safely keep the same in his office.

Surveyor's records may be transcribed. (Act Nov. 6, 1871, p. 18.)

Art. 4105. [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 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.

CHAPTER FIVE.

LAND CERTIFICATES.

Article	Article		
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When unlocated balance issues.....	4123	trict courts	4128
When location in conflict may be		Commissioner authorized to issue certifi-	
changed	4124	cates, when	4129

Article 4106. All laws and parts of laws granting lands or land certificates to any person, firm, corporation or company for the construction of railroads, canals and ditches, are repealed.

Articles repealed.
(Sen. Jour.,
1895, p. 482.)
Ib.

[Note.—The foregoing repealing act repeals original article 4106 (3871), and articles 4107 (3872), 4108 (3873), 4109 (3874), 4110 (3875), 4111 (3876), 4112 (3877), 4113 (3878), 4114 (3879), 4115, 4116, 4117, and 4118 (3882).]

Art. 4119. [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 certificates may be issued, when.
(Act May 11, 1846.)
P. D. 4122.

Art. 4120. [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 can 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. 4121. [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 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

Proofs to be made.
Ib.
P. D. 4124.

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.

Joint owners may join or sever in affidavit. (Act Feb. 7, 1852.) P. D. 4127.

Art. 4122. [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.

When unlocated balance certificate may be issued. (Act Jan. 10, 1850.)

Art. 4123. [3887] When two or more surveys have been made by virtue of any legal claim to lands 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.

When location in conflict, may be changed. (Acts of 1879, p. 20, S. S.)

Art. 4124. [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.

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.

Art. 4125. [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 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. 4126. [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. (Act June 2, 1873, p. 180, §6.) P. D. 7099pp.

Art. 4127. [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 certificate of unlocated balance.

Triplicate certificate, when obtained. (Act Nov. 27, 1861.) P. D. 4158.

Art. 4128. [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 28, 1848.) P. D. 4237.

Art. 4129. [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.

Commissioner authorized to issue certificate. (Act March 6, 1863, p. 23, §1.)

CHAPTER SIX.

ENTRIES AND LOCATIONS.

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Article 4130. [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.

Surveyor shall keep a register of entries. (Act Aug. 30, 1856.) P. D. 4573.

Art. 4131. [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. 4132. [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. 4133. [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. Art. 4134. [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 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. Art. 4135. [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 relocated on same land, when. (Act Feb. 10, 1852.) Art. 4136. [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 relocate the same certificate or other evidence of legal right to land, upon the same survey, but without being compelled to have the same resurveyed; provided, said survey shall not have been previously located by some other person by right of a genuine land claim.

Relocation, how made, etc. Art. 4137. [3901] Any person wishing to avail himself of the privilege of relocating 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 relocation 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 relocated as in other cases.

Surveys shall be made within twelve months. Art. 4138. [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 relocation and survey; but such lands shall not in any case be subject to relocation at any time by the same certificate.

May be made in more than two places. Art. 4139. [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. 4140. [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.

Art. 4141. [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.

Surveyor to record such location.

CHAPTER SEVEN.

SURVEYS AND THE FIELD-NOTES THEREOF.

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Article 4142. [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.

[Note.—Article 4143 (3907) omitted as repealed by the report of the joint committee on amendments to the Revised Civil Code; No. 64, Sen. Jour., p. 482.]

Art. 4144. [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 is made, giving a true description of same by numbers, date, when and where issued, name of original grantee and quantity.

Field-notes shall describe, what.

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.

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.

Art. 4145. [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.

Copy obtained
on loss of
original field-
notes.
Ib.
P. D. 4552.

Art. 4146. [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 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. 4147. [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.
Ib.

Art. 4148. [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 per-
mitted, when.
(Act Feb. 10,
1864.)
P. D. 4522.

Art. 4149. [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. 4150. [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.
Ib.
P. D. 4527.

Art. 4151. [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.

Art. 4152. [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, when it is made to appear to the commissioner of the general land office, by the certificate of the county clerk of the county in which the land is situated, that there is no title to said survey on record in said county, and by the affidavits of two credible citizens of said county that the said land is not occupied by the owner nor by some person holding for him.

When surveys void.
(Acts of 1885, p. 50.)

Art. 4153. [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 damages or injury said party or parties may sustain by reason of such neglect, refusal or failure, to be recovered before any competent tribunal.

Liability for failing to survey.
Ib.
P. D. 4569.

Art. 4154. [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. 4155. [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. 4156. [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.

[Note.—Article 4157 (3921) omitted as repealed by the report of the joint committee on amendments to the Revised Civil Code; No. 64, Sen. Jour., p. 482.]

Art. 4158. [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. 4159. [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.

Art. 4159a. Whenever the commissioner of the general land office shall find by inspection of the whole body of the application that it was made for the purpose of having a survey made of a portion

To relieve actual occupants.
(Acts 1895, p. 149.)

of the unappropriated public domain for the homestead of the applicant, under "An act for the benefit of actual occupants of the public lands," approved May 26, 1873, and acts amendatory thereof, and upon which application the surveyor did make the survey as required by law, even though his field-notes were not returned to the land office within twelve months, and shall also find that the proof of occupancy as required by law is fully and properly made, from all of which it shall be manifestly clear to the commissioner that the applicant had in good faith endeavored to comply with the law hereinbefore recited, but was misled through the omission or ignorance of the officers charged by law to perform their duties in the premises, he shall issue and sign the patent, notwithstanding the application may not have been sworn to, or not signed if sworn to, or shall not have the seal of the officer before whom the affidavit was made attached thereto, and notwithstanding the application may contain a recital of articles 3926 and 3927 of the Revised Civil Statutes of Texas, "An act for the relief of actual occupants of the public lands," approved April 24, 1879, when it shall be manifest from all the papers on file in the land office that such recital was erroneously made.

[Note.—The articles referred to in this article, being parts of the act of May 26, 1873, do not appear to have been codified by the commission of 1893, nor to have been considered by the legislature in revising same.]

Law not to
apply, when.
Ib.

Art. 4159b. That nothing in this law shall be construed to allow any applicant to obtain a patent in any case where subsequent settlers have, by reason of any of the failures or delays recited in this law, themselves settled upon any of such lands in good faith as a home, nor thus defeat such subsequent applicant.

Land purchase money
refunded,
when.
Ib. p. 162.

Art. 4159c. Upon proper proof being made to the comptroller that money has been in good faith paid into the state treasury upon lands for taxes, lease and purchase money, for which, on account of conflicts, erroneous surveys, or illegal sales, patents can not legally issue, or upon lands which patents have issued and have been or may hereafter be legally cancelled, the comptroller is hereby authorized to issue his warrant for the amount so paid into the treasury in favor of the parties who have in good faith paid such money for which they receive no consideration; provided, that this article shall not apply to surveys the errors in which may be corrected; and provided further, that whenever the official records of the general land office shall show that patents for such lands can not legally issue upon such surveys, on account of conflicts, erroneous or illegal sales, or that patents issued on such lands have been legally cancelled, it shall be the duty of the commissioner to issue his certificate to that effect, which certificate filed with the comptroller shall be sufficient proof to authorize him to act under the provisions hereof.

CHAPTER EIGHT.

HOMESTEAD DONATIONS.

	Article		Article
Who is entitled to one hundred and sixty acres	4160	Proof shall be by affidavit, etc.....	4168
Who is entitled to eighty acres.....	4161	Patents shall issue to the heirs, when.....	4169
Shall present application in writing.....	4162	No assignment valid, unless by deed, etc.....	4170
Shall be sworn to, filed and recorded.....	4163	Shall forfeit right and title, when.....	4171
Shall be surveyed in twelve months.....	4164	Land certificate may be applied, etc.....	4172
Preference right to survey and patent.....	4165	Temporary abandonment not computed, when	4173
Field-notes to be returned to general land office in twelve months.....	4166	Homestead donations on titled lands prohibited	4174
Entitled to patent after three years' residence	4167		

Article 4160. [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. 4161. [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. 4162. [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 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 present application in writing.

Art. 4163. [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 pre-emption and homestead applications; and the said surveyor shall give a receipt therefor, if desired.

Shall be sworn to, filed and recorded.

[Note.—Article 4164 (3941) omitted as repealed by the report of the joint committee on amendments to the Revised Civil Code; No. 65, Sen. Jour., 1895, p. 482.]

Art. 4165. [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 locations 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.

Preference right to survey and patent. (Act Aug. 19, 1876, p. 197.)

Art. 4166. [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.

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. 4167. [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. 4168. [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 seal of his office.

Patents shall issue to the heirs, when. (Act March 24, 1871, p. 16.) P. D. 7053.

Art. 4169. [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.

No assignment valid unless by deed, etc. Id. P. D. 7053.

Art. 4170. [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.

Shall forfeit right and title, when.

Art. 4171. [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.

Land certificate may be applied, etc., at any time.

Art. 4172. [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.

Art. 4173. [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 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 commuted. (Act March 13, 1875, p. 197.)

Art. 4174. [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 NINE.

PATENTS.

Article	Article
Requisites of patent.....4175	Patents on unrecommended certificates prohibited.....4187
When patent to be issued.....4176	Certificates not presented to court of claims may be patented.....4188
When to be referred to the attorney-general.....4177	Patent may be cancelled, in whole or in part, where issued by mistake.....4189
Map of county to be filed.....4178	When partial conflict, may be cancelled.....4190
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Article 4175. [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.

Art. 4176. [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, 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 patent to be issued. (Act Jan. 20, 1840.) P. D. 4286.

Art. 4177. [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,

When to be referred to attorney-general.

whose decision in writing shall be sufficient authority for him to issue or withhold the patent as the case may be.

Art. 4178. [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.

Map of county to be filed. (Act Jan. 19, 1841.)

P. D. 4305. (Acts of 1879, ch. 121, p. 129.)

Patents on surveys in two counties. (Act May 9, 1846.)

P. D. 4315.

Art. 4179. [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.

In case of conflict, how patent may issue. (Act May 9, 1846.)

P. D. 4316.

Art. 4180. [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.

Art. 4181. [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. 4182. [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.

Before issuing to assignee transfers, etc., must be filed. lb.

Art. 4183. Before any patent shall issue to the assignee under the preceding article, he must present and file 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. 4184. [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. 4185. [3961] All patents which have heretofore been issued by the authorities of the republic of the 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.

In what order patents shall issue. (Act April 8, 1861.)

P. D. 4300. (Acts of 1879, extra session, ch. 27.)

Art. 4186. [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 evi-

dence that no previous survey has been legally filed in the land office covering the same ground as represented on the maps of the office.

Art. 4187. [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 of 1879, ch. 121, p. 129.)

[Note.—Article 4188 (3964) omitted as repealed by the report of the joint committee on amendments to the Revised Civil Code; No. 67, Sen. Jour., 1895, p. 482.]

Art. 4189. [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 relocation.

Patent may be cancelled in whole or in part, where issued by mistake.
(Act March 10, 1885, p. 76.)

Art. 4190. [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 title, where from the field-notes the same may be done, and also issue to such applicant a certificate for the unlocated balance.

When in partial conflict, may be cancelled.
(Act Feb. 3, 1874.)
P. D. 4302.

Art. 4191. The commissioner of the general land office is hereby authorized and required to issue and deliver all patents now or hereafter ready for delivery to the person entitled to receive the same, when it appears from the books of said office that the legal fee for said patent has been at any time heretofore deposited in said office and not withdrawn.

Commissioner required to deliver patent, when.
(Acts of 1891, p. 182.)

Refunding of fee when patent can not issue. (Acts of 1883, p. 113.)

Art. 4192. Upon proper proof being made to the comptroller that deposits have been made in any special funds of moneys, for which deposits and payments no patents for lands can be issued for which such payment may have been or may hereafter be made, the comptroller is authorized to issue his warrant in favor of such parties for such amount as may be found to be due; provided, this article shall not apply to surveys the errors in which may be corrected.

When patent may be delivered to agent.

Art. 4193. [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.

Commissioner required to issue patents on certificates not reported by clerks, when. (Acts of 1883, p. 82.)

Art. 4194. The commissioner of the general land office is authorized and required to issue patents to lands that have been surveyed and returned to the general land office and have been suspended because the clerks of the county courts have failed to make reports as required by law, when said commissioner is satisfied from evidence in his office that such patents should issue.

Penalty for failure to pay fees on patents. (Acts of 1879, p. 62.)

Art. 4195. If any patents remain in the land office six months after the owners are notified of the issuance, and to pay the dues on the same, it shall be the duty of the commissioner to add to the amount of said fees a penalty of ten per cent per month for the whole time the fees may remain unpaid, and to collect said penalty and fees from the persons or corporations to whom said patents have been granted, and said commissioner shall have no authority to deliver any patent for land or certified copy of field-notes or certificate thereof until the whole amount of said fees and penalty shall have been paid, and it is made the duty of the attorney-general to bring suit for the same in the district court of Travis county.

Venue, etc.

State shall have a lien to secure the fees. Ib.

Art. 4196. The state of Texas has and shall hereafter have a lien upon all the land conveyed by or included in all patents to land granted by the state for the amount of fees and penalties provided for in the preceding article, and said land shall be subject to be sold in satisfaction of the same.

CHAPTER TEN.

LAND RESERVATIONS.

	Article		Article
What severed from public domain.....	4198	Reservation surrendered, how.....	4199

[Note.—Articles 4197 and 4198. By the report of the joint committee on amendments to the Revised Civil Code (No. 68, Sen. Jour., 1895, p. 482) Article 4197 is renumbered 4198 and amended to include the words “under chapter 8, Title LXXXVII., Revised Civil Statutes,” and the Article which follows and numbered by the codifiers of 1892 as 4198 (3969) is omitted as repealed.]

Severed from public domain. (Acts of 1885, p. 104; amend. 1895, No. 68, Sen. Jour. p. 482.)

Article 4198. 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 event of forfeiture to the state, are expressly reserved from location except by actual settlers under chapter 8, title LXXXVII, Revised Civil Statutes.

Reservation surrendered, how. (Acts of 1879, p. 175.)

Art. 4199. 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 rail-

road company shall file in the office of the secretary of state 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 this chapter 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.

CHAPTER ELEVEN.

SALE OF VACANT AND UNAPPROPRIATED LANDS.

Article Certain land withdrawn from sale.....4200 Manner of purchasing public domain in less than six hundred and forty acres..4201 Application, how made.....4202 Land to be surveyed.....4203	Article Surveyor's fees4204 Patent to issue, when.....4205 Forfeiture, etc.4206 Reservations not to be disturbed.....4207
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Article 4200. All the public lands heretofore authorized to be sold under the act entitled "An act to provide for the sale of the unappropriated public land of the state of Texas, and the investment of the proceeds of such sale," approved July 14, 1879, are withdrawn from sale; provided, that nothing contained in this article shall be construed to return the land reserved by an act entitled "An act to provide for the sale of a portion of the unappropriated public lands of the state of Texas, and the investment of the proceeds of such sale," approved July 14, 1879, and the act amendatory of such act, approved March 11, 1881, to the mass of the public domain, but the same shall be construed to be reserved for the purposes for which said land was originally set apart and designated by said act until the legislature shall otherwise provide.

Subject to location, how. Effect of surrender. Certain land withdrawn from sale. (Acts of 1883, p. 2.)

Art. 4201. Any person desiring to purchase any of such appropriated public lands situated in organized counties of the state of Texas as contain not more than six hundred and forty acres, appropriated by an act to provide for the investment of the proceeds of such sale, approved July 14, 1879, may do so by causing the tract or tracts which such person may desire to purchase to be surveyed by the authorized public surveyor of the county in which such land is situated. The provisions of this article shall not be so construed as to prohibit the right of acquiring any of said lands under the homestead donation law, within the bounds of the reservation here made; but any person shall have the same right of acquiring a homestead within this reservation, under the homestead donation laws of this state, as he may have had prior to April, 1889; provided, where it is ascertained that any of such lands as contain not more than six hundred and forty acres are situated within the inclosed lands of any actual bona fide settler and resident of the state, such settler shall

Manner of purchasing public domain in amounts less than 640 acres. (Acts of 1889, p. 48.)

have the preference right for six months from the time that the same shall have been declared by the commissioner of the general land office to be vacant and subject to sale, to purchase as much of said land as may be embraced within his inclosure; provided, that said preference right shall not be given to any person who has inclosed any vacant land knowing the same to be vacant at the time of inclosing same.

Application, how made. (Acts of 1887, p. 61, §2.)

Art. 4202. The person desiring to purchase any of said lands shall make application therefor in writing, describing the lands by reference to the surrounding surveys.

Lands to be surveyed. Ib. §3.

Art. 4203. It shall be the duty of the surveyor to survey the lands designated in said application within three months from the date thereof, and within sixty days after said survey to certify to, record and map the field-notes of said survey; and he shall also within the said sixty days return to and file the same in the general land office, together with the applications for the purchase thereof, as required by law in other cases.

Surveyor's fees. Ib. §4.

Art. 4204. Surveyors shall be entitled to receive from applicants for the purchase of lands under the authority of this chapter all legal surveyors' fees for work done by them.

Patent to issue, when. Ib. §5.

Art. 4205. Within ninety days after the return to and filing in the general land office of the surveyor's certificate, map and field-notes of the land desired to be purchased, it shall be the right of the person who has had the same surveyed to pay or cause to be paid into the treasury of the state of Texas the purchase money therefor at two dollars per acre; and upon the presentation to the commissioner of the general land office of the receipt of the state treasurer for such purchase money, said commissioner shall issue to said person a patent for the tract or tracts of land so surveyed and paid for.

Failure to pay to work forfeiture. Ib. §6.

Art. 4206. Should any applicant for the purchase of public land fail, refuse or neglect to pay for the same within the time prescribed in article 4205 he shall forfeit all rights thereto, and shall not thereafter be allowed to purchase the same, but such land so surveyed may be sold as if no survey had been made.

Reservations not to be disturbed. Ib. §7.

Art. 4207. Nothing in this title shall be so construed as to operate as a repeal of the reservations and donations of the lands referred to in this title to the free school and public debt funds made by former laws, but such reservations and donations shall be preserved intact, and the proceeds arising from the sale of the same under the provisions of this chapter shall go one-half to the permanent free school fund and the other half to the public debt.

CHAPTER TWELVE.

GENERAL PROVISIONS.

Article	Article
Certificates not to be located on titled lands	4208
No officer to be interested in public lands, etc.	4211
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Supplemental abstracts furnished, when.....	4216
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Printing of, how paid for.....	4218
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Certificates shall not be located, etc., on titled land. (Const., art. 14, §2.)

Article 4208. [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.

[Note.—Articles 4209 (3978) and 4210 (3981) omitted as repealed by the report of the joint committee on amendments to the Revised Civil Code; No. 70, Sen. Jour., 1895, p. 482.]

Art. 4211. [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 nor receive any fee or emolument for negotiating or transacting the business of said office, other than those fees allowed by law.

No officer shall be interested in public land, etc. (Act Dec. 18, 1837.) P. D. 4090.

[Note.—Articles 4212 (3983), 4213 (3984) and 4214 (3985) omitted as repealed by the report of the joint committee on amendments to the Revised Civil Code; No. 70, Sen. Jour., 1895, p. 482.]

Art. 4215. [3986] 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.

Abstract to be corrected when necessary. Ib. §4

Art. 4216. [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 supplementary 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. 4217. [3988] The comptroller of public accounts is hereby authorized to have one thousand copies of said supplementary abstracts 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. 4218. [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.

Art. 4218a. The titles to all lands located by virtue of certificates issued to railroad companies in whole or in part for sidings, switches or turnouts, and which lands were transferred by any of said companies or their duly appointed receivers or assigns prior to the first day of January, A. D. 1891, to purchasers in actual good faith for value, and are now owned by such purchasers, their heirs or assigns, be and the same are hereby validated to such purchasers, their heirs or assigns, and also to all actual settlers on such lands so far as the state may have any claim, and that the titles to all public free school, university or asylum lands located by virtue of such certificates are also validated, whether the locations were voidable or not by reason of their having been made by the wrong surveyor; pro-

Certain locations validated. (Act of 1895, p. 36.)

vided, that this article shall not apply to lands for the recovery of which suit as has already been instituted by the state, nor be construed to validate locations made on lands that were at the time appropriated or reserved from such locations, nor shall it be construed to in any manner apply to or affect the rights of third parties heretofore acquired in good faith; provided, further, this article shall not apply or be held to validate titles in the following other cases: (1) Where said lands were transferred through foreclosure proceedings against such companies to trustees or mortgagees or other persons or corporations interested in mortgages on said lands, or who held said lands for such interested persons or corporations, and where the apparent title to said lands was still in said companies or their receivers or their transferees at such foreclosure sale on January 1, 1891, and have not been subsequently transferred to actual settlers on such land or to bona fide purchasers thereof for value and without notice. (2) Where said lands have been transferred by said companies in evasion and fraud of the laws of alienation applicable thereto and the title is now in the name of the original vendees of said companies.

CHAPTER TWELVE A.

SALE AND LEASE OF PUBLIC FREE SCHOOL, ASYLUM AND PUBLIC LANDS.

<p>Article Sale and lease provided for.....4218b Duties of commissioner of general land office.....4218c Lands to be classified, valued, etc.....4218d Duties of classifying agents.....4218e Lands subject to sale.....4218f Commissioner to notify county clerks.....4218g Price of lands.....4218h Prior right of existing settler.....4218i Commissioner to make all sales, etc.....4218j Optional payments, etc.....4218k Forfeiture of purchase.....4218l Coupling occupancies, etc.....4218m</p>	<p>Article Vendees of original purchasers protected.....4218n Cemetery, church and school house sites.....4218o Commissioner to keep accounts.....4218p Sale of timber on timbered lands.....4218q Lands to be leased, terms, etc.....4218r Same.....4218s Same; application for conditional lease.....4218t Payment of rents, how made.....4218u Cancellation of leases.....4218v Lessees privileged to purchase.....4218w Suits to recover lands, etc.....4218x Lands withheld from lease.....4218y</p>
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Sale and lease of public lands provided for. (Acts 1895, p. 63.)
 Duties of commissioner of the general land office.
 Ib.

Article 4218b. All lands heretofore or hereafter surveyed and set apart for the benefit of the public free schools, the lunatic asylum, the blind asylum, the deaf and dumb asylum, and the orphan asylum shall be sold and leased under the provisions of this chapter.

Art. 4218c. The commissioner of the general land office is hereby vested with all the power and authority necessary to carry into effect the provisions of this chapter, and shall have full charge and discretion of all matters pertaining to the sale and lease of said lands, and their protection from free use and occupancy and from unlawful enclosure, with such exceptions and under such restrictions as may be imposed by the provisions of this chapter, or by the constitution of the state. He shall, as soon as practicable, adopt such regulations not inconsistent with the constitution or this chapter as may be deemed necessary for carrying into effect the provisions of this chapter, and may from time to time alter or amend such regulations so as to protect the public interest; but all regulations shall be submitted to the governor for his approval before adoption or promulgation. He shall adopt all necessary forms of applications for sales or leases and all other forms necessary or proper for the transaction of the business imposed upon him by this chapter, and may from time to

time call upon the attorney general to prepare such forms; and it shall be the duty of that officer to furnish the commissioner of the general land office with such advice and legal assistance as may be requisite for the due execution of the provisions of this chapter; and it shall be the duty of such commissioner to call upon the attorney general for advice whenever there is any doubt as to the meaning of this chapter or any provisions thereof.

Art. 4218d. The commissioner of the general land office shall from time to time, as the public interest may require, cause any or all of the lands belonging to the several funds mentioned in this chapter to be carefully and skillfully classified and valued that have not heretofore been classified, and for this purpose he may appoint, with the approval of the governor, such number of competent agents, who shall be citizens of the county or district where such land is situated, as may be necessary, or may determine and declare the classification and valuation without the aid of such agents, and upon such facts as may be satisfactory to the commissioner. Such agents shall receive for their work a reasonable compensation, to be fixed by the commissioner of the general land office, and not to exceed the sum of three dollars per section; and no such expense shall be incurred in the absence of an appropriation by law to cover such expenditure, and the state shall not be liable for any expenditure of this character incurred in excess of current appropriations.

Lands to be
classified and
valued.
Ib.

Art. 4218e. It shall be the duty of such agents as may be appointed under the provisions of this chapter, under such restrictions and instructions as may be prescribed by the commissioner of the general land office, to classify such lands belonging to the several funds mentioned in this chapter as the commissioner may direct, into agricultural, pasture, and timber lands, and for this purpose they shall carefully examine the same, and after such examination they shall prepare an accurate plat of each section, showing the relative proportions of timber and open land on such section, and their situation; also, the quality of the soil, the topography of the land, and the quality and kind of timber, and the streams and other sources of water supply, and their location, and such other facts as may be important; and from time to time, as may be prescribed by the commissioner of the general land office, such agent shall prepare and forward to the commissioner, with such plats, a tabulated statement of such lands so examined by him, with the value of each section, and such plats and reports when approved by the commissioner, shall be filed in the general land office as a part of the records of said office; but nothing in this chapter shall be construed to require or authorize a classification of lands already classified under former laws; provided, that any section or part of any section heretofore classified as timbered land which is not pine land nor valuable chiefly for the timber thereon may be classified under the provisions of this chapter as agricultural lands.

Duties of
classifying
agents.
Ib.

Art. 4218f. When any portion of said land has been classified to the satisfaction of the commissioner under the provisions of this chapter or former laws, such lands shall be subject to sale, but to actual settlers only, and in quantities of not less than forty acres, and in multiples thereof, nor more than one section containing six hundred and forty acres more or less; provided, that when there is a fraction less than forty acres of any section left such fraction may be sold; but lands classified as purely pasture lands may be sold in quantities not to exceed four sections to the same settler.

Classified
lands subject
to sale to
actual settlers.
Ib.

Commissioner of land office to notify county clerks.
Ib.

Art. 4218g. It shall be the duty of the commissioner of the general land office to notify in writing the county clerk of each county of the valuation fixed upon each section of land in his county, and in each county attached to it for judicial purposes, which he offers for sale, which notification shall be kept by the clerk in his office and recorded in a well bound book, which shall be open to public inspection.

Price of public free school and asylum lands.
Ib.

Art. 4218h. All lands belonging to the public free schools and the several asylum funds shall be sold at no less than two dollars per acre, except pasture lands, which shall be sold at not less than one dollar per acre, and all timber lands shall be sold at not less than five dollars per acre. By timber lands as here used is meant lands valuable chiefly for the timber thereon.

Prior right reserved to existing actual settler.
Ib.

Art. 4218i. Any bona fide actual settler who may reside on any part of the lands the sale of which is authorized by this chapter at the time this chapter may go into effect, shall have the prior right for a period of ninety days after this chapter goes into effect, or after said land shall have been placed upon the market, to purchase such quantity of land as may be limited by this chapter, to include his improvements, upon complying with the provisions of this chapter regulating sales as in other cases, and such land shall be appraised without reference to the improvements thereon. Any bona fide settler who has heretofore purchased or who may hereafter purchase not exceeding one section of agricultural land, shall have the right to purchase three strictly pastoral sections, upon his making oath that he is not acting in collusion with others for the purpose of buying for any other person or corporation, and that no other person or corporation is directly or indirectly interested in the purchase of the same.

Commissioner to make all sales; conditions of same; status of vendee of original purchaser; sales after forfeiture; payments, etc.
Ib.

Art. 4218j. All sales shall be made by the commissioner of the general land office, or under his direction, and he shall prescribe suitable regulations whereby all purchasers shall be required to reside upon as a home the land purchased by them for three consecutive years next succeeding the date of their purchase, except when otherwise provided. Such regulations shall require the purchaser to reside upon the land for three consecutive years herein mentioned, and to make proper proof of such residence and occupancy to the commissioner of the general land office within two years next after the expiration of said three years, by his affidavit, corroborated by the affidavits of three disinterested and credible persons, to be certified by some officer authorized to administer oaths, and on making such proof the commissioner shall issue to the purchaser, his heirs and assigns, a certificate showing that fact. If, however, any purchaser has sold his purchase, or any part thereof, his vendee shall be permitted to compute the time of the occupancy of his vendor as a part of his own occupancy; and if any person has sold the whole or any part of his purchase under this or any former law, his vendee, or if he refuses to do so, the vendor himself, may make proof of occupancy as provided herein. Any person desiring to purchase land in accordance with the provisions of this chapter shall forward his application to the commissioner, describing the land sought to be purchased, which application shall be accompanied with the affidavit of the applicant, in effect that he desires to purchase the land for a home, and has in good faith settled thereon, except where otherwise provided herein, and he shall also swear that he is not acting in collusion with others for the purpose of buying

the land for any other person or corporation, and that no other person or corporation is interested in the purchase thereof. Any owner of land heretofore purchased, and which land has been or may be forfeited for non-payment of interest, shall have ninety days prior right after this chapter goes into effect, or after the land is again placed upon the market, to purchase said land without the condition of settlement and occupancy, in case it has been occupied for three consecutive years as required by law; but if not, then he shall reside thereon until the occupancy under the first and last purchase shall together amount to said term of three years; provided, that when any forfeiture has been made the commissioner of the general land office shall add to the appraised value of such land the amount of interest due thereon at the time of forfeiture, which shall be paid in cash with the first payment of one-fortieth of the appraised value of the land when purchased under the preference right to purchase given herein. Any original purchaser or his vendee of any of the lands the sale of which is provided for in this chapter, who has improved such land as a home, and who has been forced to temporarily abandon same on account of drouth, and who shall in good faith reoccupy the same, either by themselves or vendees, within six months after this chapter goes into effect, shall not have the forfeiture declared against them under the law providing for the forfeiture of such lands for non-occupancy; provided, that they shall make affidavit, supported by the affidavit of three disinterested witnesses, that they have reoccupied the land as a home in good faith, and that they had abandoned the same since their purchase on account of the drouth and not otherwise; and such absence shall not be deducted from the three years occupancy required by law in making final proof of occupancy; and provided further, that any purchasers or their vendees of such lands who have failed to make proof of occupancy as required by the law regulating such purchases shall have six months after this chapter shall take effect to make such proof of occupancy as required by the provisions of this chapter. The purchaser shall transmit to the treasurer of the state one-fortieth of the aggregate purchase money for the particular tract of land, and send to the commissioner his obligation to the state, duly executed, binding the purchaser to pay to the state on the first day of November of each year thereafter, until the whole purchase money is paid, one-fortieth of the aggregate price, with interest at the rate of three per cent per annum on the whole unpaid purchase money, which interest shall also be payable on the first day of November of each year; and upon receipt of one-fortieth of the purchase money by the treasurer, and the affidavit and obligation aforesaid by the commissioner, the sale shall be deemed and held effective from the date the affidavit and obligation are filed in the general land office; provided, that if the land applied for be timbered land, then the purchaser shall be required to pay the full amount of the purchase money at the time of his purchase.

Art. 4218k. Purchasers shall have the option of paying the purchase money for their lands in full at any time after they have occupied the same for three consecutive years; and when they have made such payment in full, together with the proof that they have occupied the land for three consecutive years, they shall receive patents for the same upon payment of the patent fee prescribed by law. Purchasers may also sell their lands, or a part of the same, in quantities of forty acres or multiples thereof, at any time after the sale is

Optional
payments;
original pur-
chasers may
sell, etc.
Ib.

effected under this chapter, and in such cases the vendee, or any subsequent vendee, or his heirs or legatees, shall file his own obligation with the commissioner of the general land office, together with the duly authenticated conveyance or transfer from the original purchaser and the intermediate vendee's conveyance or transfer, if any there be, duly recorded in the county where the land lies or to which said county may be attached for judicial purposes, together with his affidavit, in case three years residence has not already been had upon said land and proof made of that fact, stating that he desires to purchase the land for a home, and that he has in good faith settled thereon, and that he has not acted in collusion with others for the purpose of buying the land for any other person or corporation, and that no other person or corporation is interested in the purchase, save himself, and thereupon the original obligation shall be surrendered or cancelled or properly credited, as the case may be, and the vendee shall become the purchaser direct from the state, and be subject to all the obligations and penalties prescribed by this chapter, and the original purchaser shall be absolved in whole or in part, as the case may be, from further liability thereon; provided, that whenever a town shall be located and established upon any lands sold under this or any former chapter, the purchaser or his vendee shall be permitted to pay the entire balance of principal and interest due the state upon such land and obtain a patent therefor at any time, but no such payment shall be permitted or patent issued until such purchaser or owner of such land shall file in the general land office a certified plat of such town, made by a surveyor, which shall be accompanied by the affidavit of the owner of such land, corroborated by the affidavit of five disinterested and credible citizens of the county, to the effect that a town, giving its name, has been located and established upon the land, and that there has been erected therein, and is being occupied by bona fide citizens, twenty business and residence houses, or either, or both.

Forfeiture
of purchase
by non-pay-
ment of in-
terest, etc.
1b.

Art. 4218l. If upon the first day of November of any year the interest due on any obligation remains unpaid, the commissioner of the general land office shall endorse on such obligation "Land Forfeited," and shall cause an entry to that effect to be made on the account kept with the purchaser, and thereupon said land shall thereby be forfeited to the state without the necessity of re-entry or judicial ascertainment, and shall revert to the particular fund to which it originally belonged, and be resold under the provisions of this chapter or any future law; provided, if any purchaser shall die, his heirs or legal representatives shall have one year in which to make payment after the first day of November next after such death, and shall be absolved and exempt from the requirement of settlement and residence thereon. And if any purchaser shall fail to reside upon and improve in good faith the land purchased by him, he shall forfeit said land and all payments made thereon to the state, in the same manner as for non-payment of interest, and such land shall be again for sale as if no such sale and forfeiture had occurred; provided, that all necessary and temporary absence from such land of such purchaser, for the time of not more than six months in any one year, for the purpose of earning money with which to pay for the land, or for the purpose of schooling his children, shall not work a forfeiture of his title; provided, further, that nothing in this article contained shall be construed to inhibit the state from instituting such legal proceedings as may be necessary to enforce such for-

feiture, or to recover the full amount of the interest and such penalties as may be due the state at the time such forfeiture occurred, or to protect any other right to such land, which suits may be instituted by the attorney general or under his direction, in the proper court of the county in which the land lies or of the county to which such county is attached for judicial purposes; provided, this article shall be printed on the back of receipt.

Art. 4218m. In all cases where persons have purchased or may hereafter purchase state, school or asylum lands under any act of the legislature authorizing the sale thereof and requiring a residence of three years thereon, and said persons have so resided upon said land or may hereafter reside thereon for the period of three years as required by law, and their files have been or may hereafter be cancelled and purchases annulled by the commissioner of the general land office on account of conflict with other surveys, said persons shall have the right to purchase other lands of the classes mentioned in this article without being required to reside thereon. Persons desiring to avail themselves of the benefits of this provision shall make satisfactory proof to the commissioner of the three years' residence under their first purchase.

Coupling occupancy under second purchase to cure defects of first.
Ib.

Art. 4218n. In all cases where any of the lands mentioned in this chapter have been heretofore sold under any law authorizing the sale thereof, and the original purchaser shall have sold or may hereafter sell any part of his purchase in quantities of forty acres or multiples thereof, and the conveyance to his vendee or vendees is filed in the general land office after having been duly recorded in the proper county, the commissioner and treasurer shall credit his account with the value of the land sold, and they shall open up new accounts with the original purchaser and such vendee or vendees, and the commissioner of the general land office shall patent said land to the owners thereof in quantities of forty acres or multiples thereof; provided, that when any of such land is situated within three miles of a county seat it may be patented in twenty acre tracts.

Vendees of original purchasers protected.
Ib.

Art. 4218o. The commissioner of the general land office is hereby authorized to patent in quantities of not less than one nor more than five acres any of the vacant and unappropriated public domain of Texas or any of the lands mentioned in this chapter as sites for cemeteries, churches or school houses. When the land is desired as a location for a school house, the patent shall issue to the county judge of the proper county and his successors in office in trust for that purpose; and when desired for a church house or a cemetery, it shall be issued to trustees designated by those requesting the patent. If the land has been previously sold by the state and not patented, the owner thereof shall execute a deed therefor to the county judge or trustees, as the case may be, and cause the same to be recorded in the office of the county clerk of the proper county, and to be filed in the general land office, and shall be entitled to credit on his account with the state for the value therefor. Except in case of vacant land the value of the land shall be deposited with the state treasurer, and in all cases the patent fees shall be paid to the commissioner of the general land office before patent issues. Such land shall be taken from the margin of a tract or section or of a subdivision thereof, as the case may be.

Cemetery, church and school-house sites.
Ib.

Art. 4218p. The commissioner of the general land office shall retain in his custody as records of his office all applications, affidavits, obligations and all other papers relating to sales of said lands, and

Accounts, etc., with purchasers to be kept
Ib.

shall cause to be kept accurate accounts with each purchaser. All purchase money due upon lands, as well as accrued interest, and all other moneys arising from the sales or leases of said lands shall be paid by the purchaser or lessee direct to the treasurer of the state, who shall cause an accurate account to be kept with each purchaser, and who shall execute duplicate receipts for all sums of money paid to him under the provisions of this chapter, one of which receipts shall be delivered to the purchaser or his agent, and the other transmitted to the commissioner of the general land office.

Sale of timber on timbered lands, etc.
ib.

Art. 4218q. The commissioner of the general land office shall adopt such regulations for the sale of timber on the timbered lands as may be deemed necessary and judicious. Such timber shall not be sold for less than five dollars per acre, cash, except in such cases as the commissioner may ascertain by definite examinations by an approved agent appointed by him for that purpose, to be paid by the purchaser, to be sparsely timbered or containing timber of but little value, in which case he may sell the timber on such sections or part of sections at its proper value; provided, such timber is sold at not less than two dollars per acre. The purchaser shall have five years from the date of his purchase within which to remove the timber therefrom, and in case of failure to do so, such timber shall thereby be forfeited to the state without judicial ascertainment; provided, that all timbered lands from which the timber has been cut and taken off may be placed on the market and sold as agricultural or grazing lands, according to classifications to be made by the land commissioner; provided, that the purchaser or his vendees of any such timber shall have the right to purchase the land upon which such timber so purchased is situated at two dollars per acre, cash, at any time before the expiration of five years from date of purchase of timber under the provisions of this chapter.

Lands to be leased; terms, conditions, etc.
ib.; amend.
p. 75.

Art. 4218r. The public lands and all lands referred to in the several funds mentioned in this chapter shall be leased by the commissioner of the general land office under the provisions of this chapter, at not less than three cents per acre. All lands classified as agricultural and all lands containing permanent water thereon shall be leased for a term of five years or less, and all lands classified as pastoral or dry grazing lands shall be leased for a term of not more than ten years, and the rental shall be paid yearly in advance, the first payment to be made at the time the lease contract is entered into. If at the termination of any lease the lands covered thereby are still for lease, the lessee thereof shall have the preference right to again lease such lands theretofore leased by him upon the terms and at the price then fixed by law. All leases shall be executed under the hand and seal of the land commissioner and delivered to the lessee or his duly authorized agent, and such lease shall not take effect until the first annual rental is paid and such lease thereof duly filed for record in the clerk's office of the proper county, and it shall not be necessary for the commissioner to acknowledge such lease contract so signed and delivered; and all leases under the provisions of this chapter may be advertised by the commissioner in such manner as he may think best, and let to the highest responsible bidder in such quantities and under such regulations as he may think to the best interest of the state not inconsistent with the equities of the occupant. All bids and offers to lease may be rejected by him prior to signing the lease contract, for fraud or collusion or other good and sufficient cause.

Art. 4218s. Any person desiring to lease any portion of the lands ^{Same.} belonging to any of the funds mentioned in this chapter shall make ^{1b.} application in writing to the commissioner of the general land office, specifying and describing the particular lands he desires to lease, and thereupon the commissioner, if satisfied that the lands applied for are not in immediate demand for purposes of actual settlement, shall notify the applicant in writing that his proposition to lease is accepted, and thereupon he shall execute and deliver to the lessee, in the name and by the authority of the state of Texas, a lease of said land for such term as may be agreed upon, and deliver the same to such lessee when satisfied that the lessee has paid to the treasurer of the state the rent for one year in advance. No lands which are now or may hereafter be classified as grazing or pasture lands shall be subject to sale, nor shall the possession thereof by the lessee be disturbed during the term of such lease, except as herein provided, so long as the rents are paid promptly in advance each year, as required by this chapter. Any actual settler upon any of the lands mentioned in this chapter, being the head of a family, shall have the right to buy at any time not more than three additional sections of strictly pasture lands, notwithstanding any lease thereof, unless by some other actual settler, the head of a family, leasing not more than three sections. Whenever any lease-holder has leased from the state of Texas exceeding ten sections, any actual settler, being the head of a family, shall have the right to lease within a radius of five miles of the land occupied by him not exceeding three sections of the land held by such larger leaseholder, but shall not be allowed thereby to reduce the larger leasehold to less than ten sections; provided, that any man not the head of a family shall have this preference right to lease three sections after having placed two hundred dollars worth of improvements on the section purchased by him; provided, that in all cases where the actual settler having purchased one section of land is permitted by the provisions of this article to buy or lease additional lands, and thus terminate the lease of the larger leaseholder, he shall be required to so select such additional lands sought to be purchased or leased by him as that by an exchange of lands, section for section and acre for acre, of like quality and class with the larger leaseholder, he can secure the quantity of land he desires to purchase or lease in a solid body; and in case the larger leaseholder desires to do so the actual settler so purchasing or leasing the additional lands in this article mentioned shall make such exchange with him, and shall be required to fence the same separate and apart from the lands of the larger leaseholder; but in no case shall the actual settler be allowed to purchase or lease the lands and terminate the lease of the larger leaseholder under the provisions of this article upon which there is a permanent natural or artificial water supply; and in no case shall such actual settler be permitted to so select such additional lands for purchase or lease as that by an exchange of lands with the larger leaseholder such larger leaseholder will be required to give in exchange any lands upon which there may be a permanent natural or artificial water supply, or upon which there may be improvements of the value of two hundred dollars. In case the larger leaseholder does not desire to exchange lands, as herein provided, with the actual settler, or upon request made by such actual settler refuses to do so within a reasonable time, then he shall not be required to fence his land, but may turn loose inside of any inclosure in which his lands may be situated not more than one head of cattle or horses, or in

lieu thereof four head of sheep or goats, for every ten acres of land so purchased or leased by him; provided, further, that nothing herein shall be construed so as to prevent either lessee from fencing his own land from the other if he should desire to do so, or to require the small leaseholder to fence his lands at all unless the larger leaseholder shall have his leasehold fenced; and provided further, that nothing in this article shall be so construed as to permit any actual settler, either by purchase or lease, or by both, to terminate the lease of the larger leaseholder upon more than four sections; and provided further, that north of a line extending west from the southeast corner of Callahan county to the southeast corner of Martin county; thence north to the south line of Lynn county; thence west to the southwest corner of Lynn county; thence north to the south line of Castro county; thence west to the line of New Mexico, the settler exercising the preference right herein given to buy or lease within the enclosure of another may so buy or lease any lands except a section on which there are improvements of the value of two hundred dollars, or on which there is a permanent artificial water supply, and shall not be required to enclose his lands separate from the lands of the larger leaseholder unless he can obtain the full amount of four sections in a solid body, or unless the same can be secured in a solid body by exchange of lands for the term for which he leases, section for section or acre for acre, with the larger leaseholder; and in all cases where he is not required by the provisions of this chapter to enclose his lands he may turn loose not more than one head of horses or cattle, or in lieu thereof four head of sheep or goats, for every ten acres of land purchased or leased by him and unenclosed. Each violation of the provisions of this chapter which restricts the number of stock that may be turned loose on lands leased from the state shall be an offense, and the offender, on conviction, shall be punished by a fine of one dollar for each head of stock he may so turn loose, and each thirty days violation of the provisions of this article shall constitute a separate offense. Any agricultural land that may be leased by an actual settler shall be subject to sale and settlement, but in case his lease does not embrace more than three sections, only on condition that the purchaser enclose with posts and at least two wires the land purchased by him separate from the land held by the lessee, and failure to so enclose it within three months from the date of the purchase shall be sufficient cause to authorize the commissioner to cancel the contract of purchase and reinstate the lease. In all cases where the lease is terminated under any of the provisions hereof, before the expiration of the term of lease, the lessee shall have a pro rata credit upon his next year's rent, or the money refunded to him by the treasurer, as he may elect. On the expiration of his lease or its termination under any provision of this article the lessee shall have the right for a period of sixty days to remove any or all the improvements he shall have placed upon the leased premises.

same; appli-
cations for
conditional
lease.
Ib. p. 63.

Art. 4218t. Any person desiring to lease any portion of the lands aforesaid on which no permanent water supply exists, shall notify the commissioner of the general land office in writing that he desires to lease lands, specifying and describing them, provided he can obtain the necessary supply of water by boring or otherwise, and that he will within ninety days lease said lands, provided such water supply can be obtained; he shall also make and file with the commissioner of the general land office his bond, with good and sufficient per-

sonal security in a sum equal to one year's rental of the quantity of land applied for, payable to the state of Texas, conditioned that he will diligently and in good faith try to secure water on such land during such ninety days, and if secured will lease the designated lands for the term prescribed herein, and thereupon the commissioner shall for such ninety days withhold the lands thus designated from lease to any other person; within or at the expiration of said ninety days and annually thereafter such applicant to lease shall pay to the state of Texas, in advance, one year's rental of the land applied for by him, on satisfactory proof of which payment the commissioner shall execute and deliver to the lessee a lease of the said lands, signed by himself officially and attested by the seal of the land office, together with which he shall deliver up the bond of said lessee, marked "Satisfied." If the said lessee shall fail to apply for his lease and make the payment aforesaid within said ninety days, and shall also within said ninety days fail to make proof to the satisfaction of the commissioner of the general land office within that time that he has in good faith and diligently used proper means and expended proper efforts to secure a water supply on such land and failed, then and in that case the commissioner shall mark said bond "Forfeited," and shall deliver the same to the attorney general of the state, who shall at once cause the said bond to be sued upon and collected; and such collection shall become a part of the available school fund. The penalty stated in such bond is hereby declared to be liquidated damages, and judgment for that sum shall in all cases be recovered by the state. Proof satisfactory to the commissioner of the general land office that proper, suitable and diligent effort had been made by such applicant to secure water, and that sufficient water could not be secured, shall relieve the principal and sureties on said bond from all responsibility therein, and it shall be marked "Satisfied" by said commissioner and delivered to the principal therein. No lease of less than four sections of unwatered pasture lands shall be made unless such less number includes all unleased land in that vicinity belonging to the several funds mentioned in this chapter. Lessees or their vendees who shall have at their own expense secured water on their leaseholds in accordance with the provisions of this article shall, at the expiration of their lease contract, have the right to a renewal of their leases for another term of five years at the price then provided by law, by giving sixty days' written notice to the commissioner, as provided in the preceding article.

[Note.—Section 20 of the act of April 4, 1895, p. 72, was repealed by the act of April 16, 1895, p. 75.]

Art. 4218u. All lessees shall pay the annual rents due for leased lands directly to the treasurer of the state, who shall execute receipts in duplicate for each payment made by any lessee, one of which receipts shall be delivered to the lessee and the other transmitted to the commissioner of the general land office. The treasurer shall cause to be kept an accurate account with each lessee, and the commissioner of the general land office shall file in his office all applications and other papers relating to leases, and keep a record of all leases made, which papers shall constitute a part of the records of his office.

Payment of rents, how made.

Art. 4218v. If any lessee shall fail to pay the annual rent due in advance for any year within sixty days after such rents shall become due, the commissioner of the general land office may declare such

Leases, how cancelled for non-payment of rents.
1b.

lease cancelled by a writing under his hand and seal of office, which writing shall be filed with the other papers relating to such lease, and thereupon such lease shall immediately terminate, and the lands so leased shall become subject to purchase or lease under the provisions of this chapter. Such lease shall not be made to original lessees until all arrears are fully paid. During the continuance of all leases, and after forfeiture, the state shall have a lien upon all property owned by the lessee upon the leased premises to secure the payment of all rents due, which lien shall be superior to all other liens whatsoever; and it shall not be essential to the preservation or validity of such lien that it shall be reserved in the instrument of lease.

Lessees privileged to purchase; personal property in improvements.
Ib.

Art. 4218w. Lessees shall have the right at any time to purchase their leased lands, subject to the limitations as to quantity provided by this chapter, and at the price and on the conditions herein provided, without reference to any improvements made on such lands by such lessees; and all improvements made by lessees on lands leased by them are hereby declared to be personal property, which may be removed by such lessees on the expiration of their lease contracts; and they shall have sixty days after such expiration in which to remove the same.

Suits to recover lands illegally occupied.
Ib., amend.
p. 75.

Art. 4218x. If the governor shall at any time be credibly informed that any portion of the public lands or the lands belonging to any of the several funds named in this chapter have been enclosed or that fences have been erected thereon without authority of law, he is authorized in his discretion to direct the attorney general to institute suit in the name of the state for the recovery of such lands and damages, and a fee of not less than ten dollars for the attorney when the sum recovered is less than one hundred dollars, and when it is over that sum the fee shall be ten per cent, to be paid by the defendant for the use and occupancy of the same, and the removal of such enclosures and fences; and such damages shall not be for a less sum than the amount of all the leases due during such occupancy. For the recovery by the state of all lands sold under the provisions of this or former laws which have been or may hereafter be forfeited to the state for any reason, and for the recovery of any money due the states on leases made under this or former laws, and for the recovery of damages for the unlawful use and occupancy of such lands, as provided in this article, or any former laws, jurisdiction is expressly conferred on the courts of Travis county having jurisdiction thereof under the constitution concurrently with courts of the districts in which the land is situated, and all such suits shall be instituted by the attorney general or under his direction. In suits provided for in this article, the court shall issue a writ of sequestration directed to any sheriff of the state, commanding and requiring such officer to take such land and all property thereon belonging to the person or persons so unlawfully occupying said lands into his actual custody, and hold the same subject to further orders of the court, and the state shall not be required to give bond. Such writ of sequestration may be executed by any sheriff of the state into whose hands it may be delivered, and it shall be the duty of any sheriff into whose hands it may come to proceed and execute such writ. The defendant in such suit may replevy as in ordinary cases by giving bond as prescribed by law, and such cases shall have precedence on the docket and stand for trial before all other cases; and in case judgment is recovered by the state in such suit the court shall order such enclosure or fences to be removed, and

shall tax the costs of the suit against the defendant, and all property found upon the land belonging to the defendant, not exempt from execution, shall be liable to the payment of such costs and damages in addition to the personal liability of the defendant. Appeals may be prosecuted from all judgments in such cases as in ordinary cases, except that the state shall not be required to give bond to perfect its appeal, and such cases on appeal shall have precedence over all other cases. If any person shall make a lease contract, and after the same is enclosed by fence shall for any cause decide not to continue payment of his lease, either in whole or in part, he shall give public notice by publication in any local paper having the largest circulation, for at least sixty days before the time in which his next annual payment shall become due, that he will not continue his lease after the year for which payment is made, and shall also state the number and block of the land which he will not lease inside his inclosure, if he only intends to surrender a part of his lease, and shall post and shall keep posted for said sixty days notice on all gates of his pasture of such intention; then, and then only, he shall not be subject to the suit nor liable for the damages provided for in this article.

[Note.—For penalties for violations of this chapter see Penal Code.]

Art. 4218y. The commissioner of the general land office may withhold from lease any agricultural lands necessary for purposes of settlement; and no agricultural lands shall be leased if in the judgment of the commissioner they may be in immediate demand for settlement, but such lands shall be held for settlement and sold to actual settlers only under the provisions of this chapter; and all sections or fractions of sections in all counties organized prior to the first day of January, 1875, except El Paso, Pecos and Presidio counties, which sections are detached and isolated from other public lands, may be sold to any purchaser except to a corporation without actual settlement, at not less than two dollars per acre, upon such terms as the commissioner of the general land office may prescribe.

Certain lands withheld from lease. *ib.*, p. 63.

TITLE LXXXVIII.

Public Printing.

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Board of public printing provided for. (Act June 27, 1876, p. 31, §81, 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, 1876, p. 91, §1.)

Article 4219. [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. 4220. [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. 4221. [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. 4222. [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. 4223. [3994] The public printing shall be divided into four classes, as follows:

Printing
classified.
Prices to be
paid.
(Acts of 1885,
p. 100.)
First class.

First—The first class shall include the printing and binding of the laws, journals, department reports, governor's messages and like documents, which shall be printed on white calendered book paper of uniform color, twenty-five by thirty-eight inches in size and weighing not less than forty-five pounds to the ream, from long primer type (except tabular work, which may be from such type smaller than long primer as the nature of the work and good taste may require); the pages of the laws, department reports, governor's messages and like documents to be twenty-six ems pica wide and forty-six ems pica long, including head and foot lines, and to contain not less than eighteen hundred and twenty-four ems; and the journals shall be printed in octavo form, the pages to be twenty-six and one-half picas wide and forty-six ems pica long, including head and foot lines, from brevier type, two columns to the page, each column thirteen ems pica wide, and each page to contain not less than twenty-eight hundred ems. When printed the laws and reports shall be neatly folded, stitched, covered and trimmed, and the journals and messages folded, stitched and trimmed. Cover paper shall be not less than thirty-five pounds to the ream. The index to the laws shall be printed from brevier type, and the index to the journals from nonpareil type. The maximum prices for the material and work of the first class shall be: For paper, white and cover, per pound, fifteen cents, and no allowance shall be made for waste; composition, seventy-five cents per one thousand ems, printer's measurement; press work, sixteen pages to the form, unless the nature of the work requires a smaller number of pages, fifty cents a token of two hundred and forty impressions or less; binding, forty cents per one hundred for folding, stitching, covering and trimming first signature of sixteen pages, and twenty cents per one hundred for each additional signature of sixteen pages or less; for folding, stitching and trimming without covering, thirty cents per one hundred for first signature of sixteen pages, and fifteen cents per one hundred for each additional signature of sixteen pages or less. No matter shall be leaded except by the express direction of the printing board. The printing board shall, at the same time the contract is let for the printing of the journals of the two houses of the legislature, include in said contract the printing and delivery of each day's proceedings of the two houses while in session, the same to be printed in octavo form as provided in this act for the printing of the regular journals of the two houses, five hundred copies for the use of the house of representatives, and two hundred copies for the use of the senate, the same to be delivered by the hour of meeting of the day following that on which such proceedings were had.

Second—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 unruled flat papers of such dimensions and weights as the nature of the work may require. The maximum prices for such work shall be as follows: For composition, fifty cents per one thousand ems, printer's measurement; for press work on forms the size of flat cap sheet or less, forty cents per token; on forms larger than flat cap, fifty cents per token; and a token shall be two hundred and forty impressions or less when the number of

Second class.
(Acts of 1885,
p. 100-2-3.)

copies of a job ordered shall require a less number of impressions. The maximum price for paper required for work of the second class shall be twenty-five cents per pound. For ruling work of the second class the maximum price shall be twenty cents per one hundred sheets for each actual and necessary passage through the ruling machine. For numbering, with a numbering or paging machine, per one hundred pages, or per one hundred numbers, ten cents. For binding work of the second class the maximum price shall be: For pads of one hundred copies each, of any printed job, quarter-sheet cap, demy, post or medium, per pad five cents; for pads of two hundred copies of any printed job, half-sheet cap, demy, post or medium, per pad ten cents; for quarter binding quarter-sheet cap, demy, post or medium, per quire ten cents; for quarter binding half-sheet cap, demy, post or medium, per quire fifteen cents; for quarter binding whole sheet cap, demy, post or medium, per quire twenty cents; for half binding quarter-sheet cap, demy, post or medium, per quire twenty-five cents; for half binding half-sheet cap, demy, post or medium, per quire thirty-five cents; for half binding whole sheet cap, demy, post or medium, per quire forty-five cents. A quire within the meaning here intended for binding work of the second class is not less than forty leaves.

Third class.

Third—Work of the third class shall consist of blank books, either ruled and printed, or ruled without printing. The paper shall be made of linen stock, and of the quality known among paper dealers as "P" paper; and the maximum prices shall be as follows: Cap paper, eighteen pounds to the ream, plain ruled, half bound, sixty cents per quire; ditto, printed heads, eighty-five cents per quire; ditto, plain ruled, extra full bound, one dollar per quire; ditto, printed heads, one dollar and twenty-five cents per quire. Demy paper, twenty-eight pounds to the ream, plain ruled, half bound, seventy-five cents per quire; ditto, printed heads, one dollar per quire; ditto, plain ruled, extra full bound, one dollar and twenty-five cents per quire; ditto, printed heads, one dollar and fifty cents per quire. Medium paper, forty pounds to the ream, extra full bound, Russia leather ends and bands, canvas cover with Russia leather corners, plain ruled, three dollars per quire; ditto, printed heads, four dollars per quire. Super royal paper, fifty-four pounds to the ream, extra full bound, Russia leather ends and bands, canvas cover with Russia leather corners, plain ruled, four dollars and fifty cents per quire; ditto, printed heads, five dollars per quire. A quire shall not be less than forty leaves in work of the third class. No extra charge to be allowed for vowelings, paging, labeling, lettering or gilding. Where changes in the printed heads occur in any blank book ordered, the maximum price shall be fifty cents for each change in the ruling and printing together.

Fourth class.

Fourth—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 fourteen 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, two dollars 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 of such additional copies at such rates as are contracted for, for work of the second class; provided, that the printing board in having schedules prepared for the use of bidders for the first and second classes of printing, may fix other and lower maximum prices than those designated in this article for work and material of the first and second classes of printing; and that such schedules may call for bids by the ream on all papers required for the first and second classes, giving dimensions and weights, in no-wise to exceed the basis of twenty-five cents per pound, or may call for bids by the pound for all papers required for said classes; and provided, that the printing board may in their discretion receive separate proposals and make separate contract for furnishing in part or all the printing papers required under the provisions of this article for the printing of the first and second classes, under like conditions required by law for contracts to do the printing and furnish the paper; and in event of such separate contract the printing board shall cause the papers so furnished to the state to be delivered to the contractor to do the printing and binding, on written requisition of such contractor, and under proper guards and checks, at such times and in such quantities as the requisites of any job or jobs of printing may require.

Art. 4223a. [3993] 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.

Proclamations, etc.; how published. (Amend. 1895, No. 73, Sen. Jour., p. 482.)

Art. 4224. [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.

When published in more than one paper. (Acts of 1876, p. 31, §4.)

Art. 4225. [3997] The maximum rates for stationery shall be as follows:

Stationery, maximum prices of. Ib. \$5.

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.

Foolscap 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.

Other printing and stationery.

Ib. §6.

Art. 4226. [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.

Current printing of legislature to be done at Austin.

Ib. §12.

Number of copies of laws, etc. (Acts of 1883, p. 5.)

Art. 4227. [3999] The current printing of the legislature shall be done at the seat of government.

Art. 4228. [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 one thousand copies of the journals of each house of the legislature.

Of the governor's message, etc. (Acts of 1876, p. 31, §7.)

Art. 4229. [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 other public documents. Ib. §8.

Art. 4230. [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 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.

Art. 4231. [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 said 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.

Advertisement for proposals to do public printing, etc.
Ib. §9.

Art. 4232. [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 4223 and 4225, 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 4225, and such other articles as are usually included under the term stationery.

Proposals to include, what.
Ib. §10.

Art. 4233. [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.

Bid to be accompanied by bond.
Ib. §2.

Art. 4234. [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.

No officer to be interested in contract.
Ib. §17.

Art. 4235. [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.

Proposals, to whom addressed.
Ib. §2.

Art. 4236. [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.

Awarding of contract.
Ib.

Successful bidders to be notified.

Art. 4237. [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. 4238. [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.

Suits on contractor's bond. Ib.

Art. 4239. [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.

Secretary of the senate and chief clerk of house to furnish journals, etc., to contractor. Ib. §9.

Art. 4240. [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 state to furnish laws, etc. Ib.

Art. 4241. [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 compare copies and certify, etc. Ib. §§9, 11.

Art. 4242. [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.

Work to be delivered to whom. Ib. §10.

Art. 4243. [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 at such times as such houses, or either of them, may direct.

When to be delivered. Ib. §11.

Art. 4244. [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.

Art. 4245. [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 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.

Account, how audited and paid.
Ib. §13.

Art. 4246. [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.

Accounts for current printing of legislature.
Ib. §14.

Art. 4247. [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.

Legislature may alter maximum rates, etc.
Ib. §17.

Art. 4248. [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 demand.

Contract may be abrogated, when, etc.
Ib.

Art. 4249. [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.

Board may re-let contract, etc.
Ib.

Art. 4250. The reporters for the supreme court and court of criminal appeals shall be furnished by the state printing board with all stationery necessary for the performance of their duties.

Supplies to reporters, (Acts 1889, p. 7, §2.)

TITLE LXXXIX.

Public School, Asylum and University Lands.

CHAPTER ONE.

UNIVERSITY AND ASYLUM LANDS.

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The 50 leagues appropriation. (Const., art. 7, §11.) (Act Jan. 26, 1839, p. 129.) P. D. 3550.

Article 4251. [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 1,000,000 acres appropriation. (Const., art. 7, §15.)

Art. 4252. [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.

One-half of public domain added to permanent fund, etc. (Acts of 1883, p. 71.)

Art. 4253. After the payment of the amounts due from the state to the common free school fund out of the proceeds of the sales heretofore made, or hereafter to be made, of that portion of the public lands set aside for the payment of the public debt by an act approved July 14, 1879, and an act amendatory thereof approved March 11, 1881, and the payment directed to be made to the common school and university funds by an act approved February 23, 1883, the remainder of said land, not to exceed two million of acres, contained in the counties and territory specially mentioned in said acts, or the proceeds thereof, set aside by said acts for the payment of the public debt, heretofore or hereafter to be received by the state, shall one-half thereof constitute a permanent endowment fund for the University of Texas and its branches, including the branch for the instruction of colored youths.

The asylum lands. (Const., art. 7, §9.) Act Aug. 30, 1856, p. 76.)

Art. 4254. [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.

Art. 4255. [4025] In case any of the lands appropriated and set apart by the provisions of the four 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. 4256. [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. 4257. [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 surveyor 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.

Locations prohibited, when.

Art. 4258. [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.

Copies of field-notes, etc., forwarded to district surveyors.

Art. 4259. [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 to continue until, etc.

Art. 4260. [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.

Surveyors, how paid.

Art. 4261. For the purpose of ascertaining the conflicts and errors in and making proper corrections of surveys of lands made for the common school, university or asylum funds, or other surveys in which the state may be interested, directly or indirectly, in cases where from discrepancies or imperfections in field-notes it may become necessary for the proper compilation of maps, or for the proper location and identification of said lands upon the ground, the commissioner of the general land office is hereby invested with full power and authority to have such surveys made as he may deem necessary, and to appoint competent surveyors for this purpose.

Commissioner to have surveys made, when. (Acts of 1887, p. 107.)

Bond, etc.
Ib. §2.

Art. 4262. Any surveyor appointed under the provisions of this law shall make and execute a bond in the sum of ten thousand dollars, conditioned and payable the same as bonds of county and district surveyors; he shall also take the oath prescribed by the constitution for other officers; said bond to be approved by the commissioner of the general land office, and shall be conditioned as other surveyors' bonds. He shall be under the control and direction of the commissioner of the general land office, and under such direction may survey the common school, university and asylum lands, or other lands in which the state may be interested, and prepare and return field-notes of same and certify to any and all facts, and generally do and perform such official acts as might lawfully be done by a county or district surveyor, and shall sign his name officially as "state surveyor."

May have
lands sur-
veyed, when.
Ib.

Art. 4263. The commissioner of the general land office may have any lands belonging to the common school, university or asylum funds, or other lands in which the state may be interested or lands alternating therewith, surveyed or resurveyed, and field-notes or corrected field-notes of same returned to his office by any surveyor appointed under this law, which field-notes shall have the same force and effect as if made by the county or district surveyor of the county or district in which said land lies; and upon the adoption and approval of said field-notes by the commissioner of the general land office, he shall forward to the surveyor of the county or district in which said land lies, certified copies of said field-notes, which thereafter shall be a part of the records of said surveyor's office. In carrying out the provisions of this law the commissioner of the general land office may, when requested by the owner of lands alternating with the lands resurveyed under the provisions of this law, cancel patents and in lieu thereof issue patents in accordance with said resurvey; provided, that all such owners shall pay the expenses incurred in making such corrected surveys of their lands and in issuing said patents; provided, that no claims shall be created against the state for services performed under this law in the absence of a previous appropriation therefor.

Control of uni-
versity lands
confided to re-
gents.
(Acts of 1895,
p. 19.)

Art. 4263a. The board of regents of the University of Texas are hereby invested with the sole and exclusive management and control of the lands which have heretofore been or which may hereafter be set aside and appropriated to or acquired by the University of Texas, with the right to sell, lease and otherwise manage, control and use the same in any manner, and at such prices and under such terms and conditions as may to them seem best for the interest of the university, not in conflict with the constitution of this state; provided, that such land shall not be sold at a less price per acre than the same class of land of other funds may be sold at under the statutes.

Duty of com-
missioner of
land office.
Ib.

Art. 4263b. The commissioner of the general land office is hereby directed to furnish as soon as practicable to the said board of regents complete and accurate maps and all other data necessary to show the location and condition of every tract of said university lands, and shall at all times hereafter furnish to said board such additional information as they may require, and shall at all times render to said board such assistance as may be possible and as they shall request in the discharge of the duties hereby imposed on said board.

Art. 4263c. All records and accounts of transactions in university lands, and of moneys paid thereon, shall be kept in the general land office and in office of the treasurer, as heretofore, and all patents shall be signed and issued as heretofore, and all moneys received on the sales or leases of said lands shall be paid to the treasurer of the state.

Custody of records and funds. Ib.

CHAPTER TWO.

THE PUBLIC FREE SCHOOL AND COUNTY SCHOOL LANDS.

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Lands sold—proceeds how invested.....4271	How obtained by counties.....4282
Actual settlers to have preference.....4272	

Article 4264. [4031] 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 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.

The public school lands. (Const., art. 7, §2.)

Art. 4265. Any and all public lands heretofore surveyed by railroads or corporations, or any company or any person in this state, for the benefit of the public free schools of this state, by virtue of any certificate, valid or invalid, void or voidable, be and the same are hereby declared to be lands belonging to the public free schools of this state.

Locations validated. (Acts of 1883, p. 4.)

Art. 4266. When lands are sold in unorganized counties and bid in by the comptroller for the state for the taxes due thereon, and are not redeemed by the owner thereof, nor his agent, within two years, by the party redeeming the same paying double the amount for which said land was sold, then the land thus sold and unredeemed 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 public free school fund are to be sold and disposed of by law.

Lands sold for taxes to state, etc. (Acts of 1879, p. 140.)

Art. 4267. All the vacant and unappropriated public domain embraced in the territorial limits of the county of Greer is appropriated, one-half thereof for public free schools for the education of children in Texas, without reference to race or color, and the other half for the payment of the state debt; and said lands shall be surveyed and disposed of for the purpose of carrying out the provisions of this article in such manner as may hereafter be provided by law.

Greer county lands. (Acts of 1879, p. 16.)

Art. 4268. After the payments of the amounts due from the state to the common free school fund, out of the proceeds of the sales heretofore made, or hereafter to be made, of that portion of the public lands set aside for the payment of the public debt, by an act approved July 14, 1879, and an act amendatory thereof, approved March 11, 1881, and the payment directed to be made to the common school and university funds by an act approved February 23, 1883, the remainder of said land, not to exceed two million of acres, contained

One-half of unsold public domain to permanent fund. (Acts of 1883, p. 71.)

in the counties and territory specially mentioned in said acts, or the proceeds thereof, set aside by said acts for the payment of the public debt, heretofore or hereafter to be received by the state, shall one-half thereof constitute a permanent endowment fund for the common free schools of this state.

Surveys validated.
(Acts of 1883,
p. 28.)

Art. 4269. The surveys of all county school lands heretofore made, either actually on the ground or by protraction, and returned into the general land office, according to law, and upon which patents have issued, are hereby declared valid surveys, and the titles to the lands included within the lines of said surveys, as returned to the general land office, are hereby vested in the counties for which the same were made; and in all such surveys the calls for distance shall have precedence and control calls for rivers or natural objects when the calls for distance will give the quantity of land intended to be included in the survey and the calls for natural objects or rivers will not; provided, this law shall not divest any vested right.

Such lands belong to the counties.
(Const., art. 7, §6.)

Art. 4270. [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.

Land, how sold and proceeds invested.
Ib.

Art. 4271. [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.

Actual settlers to have preference.
Ib.

Art. 4272. [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.

[Note.—Article 4273 omitted as repealed by report of the joint committee on amendments to the Revised Civil Code; No. 77, Sen. Jour., 1895, p. 482.]

Surplus segregated from public domain, when.
(Acts of 1889,
p. 104.)

Art. 4274. Surveys and blocks of surveys heretofore made by virtue of valid alternate scrip be and the same are hereby declared to segregate from the mass of the public domain all land embraced in said surveys, or blocks of surveys, as evidenced by the corners and lines of same, or by calls for natural or artificial objects, or the calls for the corners and boundaries of other surveys or by the maps and other records in the general land office.

Belong to public free school fund.
Ib. §2.

Art. 4275. All excess in said surveys are hereby donated and declared to belong to the public free school fund of the state; and it shall be the duty of the commissioner of the general land office to ascertain, by any and all means practicable, the existence and extent of such excesses, and to provide for and direct such surveys, or corrected surveys, as may be necessary for this purpose; provided, that where such surveys were made in blocks of two or more surveys, said respective surveys shall remain on the ground consecutively as placed therein, as shown by the maps, sketches and field-notes originally returned to the general land office; provided, that the per-

son who has already purchased or who may hereafter purchase from the state the particular section to which surplus shall by such resurvey be made contiguous, shall have the prior right for the period of six months after such resurvey shall have been made, in which to purchase such excess on the same terms on which such purchaser has already bought or may buy.

Art. 4276. All such surveys which under the direction of the commissioner of the general land office have been or may be hereafter corrected, so that all excess in the original surveys shall be placed in the surveys belonging to the public free schools, are hereby validated, and the action of the commissioner is hereby ratified; and he is directed and authorized to issue patents to the owners thereof, and to sell such surveys belonging to the public free schools, securing to the state the benefit of such excesses.

Excess to be added.
Ib. §3.

Art. 4277. The provisions of this law shall not apply to nor affect the rights of the third persons heretofore acquired in good faith.

Shall not affect.
Ib. §4.

Art. 4278. Nothing in the preceding four articles shall apply to any lands for which patents have been issued.

Conflicts.
Ib. §5.

Art. 4279. Where the common school or even numbered surveys in conflicting locations, made by virtue of alternate land certificates, are not identical or upon the same land, the commissioner of the general land office may, where he deems it to the interest of the state to do so, change the numbers of the surveys in the conflicting locations so as to make the common school or even numbered surveys in both locations identical; provided, that the commissioner of the general land office shall not change the numbers of surveys without the written consent of the owner of the certificates by virtue of which said surveys are made.

Even numbered surveys in conflict, etc. (Acts of 1889, p. 104.)

Art. 4280. The three hundred and twenty-five leagues of land heretofore surveyed under the provisions of an act entitled "An act to provide for designating and setting apart three hundred leagues of land out of the unappropriated public domain, for the benefit of the unorganized counties of the state, and to provide for the survey and location of the same," approved March 16, 1882, is set apart and shall constitute a reservation out of which each of the unorganized counties of this state, as it may be organized, shall be entitled to receive four leagues of land for free school purposes, and out of which such organized counties of this state as may have located their certificate for four leagues of school land in conflict with or upon land already appropriated by valid prior location and survey, or which from any cause have failed to get title to their four leagues of school land, shall be entitled to receive so much of said land as may be necessary to secure to any such county the number of acres it may be entitled to from any cause, or that may be declared to be in conflict by the commissioner of the general land office.

Unorganized county school land. (Acts of 1883, p. 45.)

Art. 4281. Each of said leagues of land shall be numbered by the commissioner of the general land office, in the order in which it was surveyed by the contractor or contractors, beginning at number one and extending to three hundred and twenty-five, and as each of the unorganized counties in this state shall be organized such county shall be entitled to the first four leagues out of the reservation authorized by the foregoing provisions, which shall not have been patented to other counties for free school purposes. Upon the payment to the treasurer of the state the actual cost of surveying fees and legal interest thereon from time of payment by the state, and upon the payment of such costs and interest, the commissioner of

Shall be numbered, etc.
Ib. §2.

the general land office is required to issue patents to said county for four leagues of land as above provided, but said counties shall not be required to pay patent fees for said patents.

Lands, how obtained by counties. *Ib.* §3.

Art. 4282. Any organized county in this state shall, in like manner as provided in the preceding articles, be entitled to receive so much of said land, not exceeding four leagues, as shall be necessary to secure to any such county the number of acres of land heretofore located by such county, and which shall be declared to be in conflict with prior locations and surveys by the commissioner of the general land office or by the decree or judgment of any court having jurisdiction of the subject matter. And it shall be the duty of the commissioner of the general land office, upon the written application of the county judge and any two of the county commissioners, accompanied by the decision of the commissioner of the land office, or a certified copy of such decree or judgment, to issue patents to such county upon the same conditions and in like manner as is provided for unorganized counties; provided, if any such county should be entitled to receive a quantity less than one league such land shall be surveyed at the expense of such county, in a square figure with at least two lines thereof (where more than one line is run) commencing on lines of original survey as may be selected by the county judge of the county that is entitled to the survey.

CHAPTER THREE.

SALE AND LEASE OF PUBLIC SCHOOL, UNIVERSITY AND ASYLUM LANDS.

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Lands to be sold or leased. (Acts of 1887, p. 83, §1.)

Article 4283. All lands heretofore or hereafter surveyed and set apart for the benefit of the public free schools, the university, the lunatic asylum, the blind asylum, the deaf and dumb asylum, and the orphan asylum, shall be sold and leased under the provisions of this chapter.

Commissioner to carry into effect, etc. *Ib.* §2.

Art. 4284. The commissioner of the general land office is hereby vested with all the power and authority necessary to carry into effect the provisions of this chapter, and shall have full charge and direction of all matters pertaining to the sale and lease of said lands, and their protection from free use and occupancy, and from unlawful inclosure, with such exceptions and under such restrictions as may be imposed by the provisions of this chapter, or by the constitution of the state. He shall, as soon as practicable, adopt such regulations not inconsistent with the constitution or this chapter as may be deemed necessary for carrying into effect the provisions of this chapter, and may from time to time alter or amend such regulations

so as to protect the public interest, but all regulations shall be submitted to the governor for his approval before adoption or promulgation. He shall adopt all necessary forms of applications for sales or leases, and all other forms necessary or proper for the transaction of business imposed upon him by this chapter, including the forms of leases, receipts and acquittances, and may from time to time call upon the attorney-general to prepare such forms, and it shall be the duty of that officer to furnish the commissioner of the general land office with such advice and legal assistance as may be requisite for the due execution of the provisions of this chapter; and it shall be the duty of such commissioner to call upon the attorney-general for advice whenever there is any doubt as to the meaning of this chapter or any provisions thereof.

Art. 4285. The commissioner of the general land office shall cause all the lands belonging to the several funds named in this chapter which may be in demand for immediate settlement, to be carefully and skillfully classified and valued; and for this purpose he may appoint, with the approval of the governor, such number of competent state agents as may be necessary to effect such classification and valuation; and he shall cause such classification and valuation to be made of the remainder of such lands from time to time as the same may come into demand for actual settlement; and with the approval of the governor he may allow such compensation to said state agents as may be just and proper, not to exceed the sum of one hundred and fifty dollars per month and necessary expenses for subsistence. He may also appoint such other assistants as may be found necessary to accomplish such classification and appraisalment and the sale or lease of the lands; but no state agents or other appointments shall be made in the absence of an appropriation by law to cover such expenditure, and the state shall not be liable for any expenditure of this character incurred in excess of the current appropriations.

Commissioner shall have classified and valued.
Ib. §3.

Art. 4286. It shall be the duty of such state agents as may be appointed under the provisions of this chapter, under such regulations and instructions as may be prescribed by the commissioner of the general land office, to classify all the lands belonging to the several funds mentioned in this law, as prescribed in article 4285, lying in the particular territory to which such agent may be assigned, into agricultural, pasture and timber lands; and for this purpose they shall carefully examine the same, and after such examination they shall prepare an accurate plat of each section, showing the relative proportions of timber and open land on such section, and their situation, also the quality of the soil, the topography of the land and the quality and kind of timber, and the streams and other sources of water supply, and their location, noting such streams as may be permanent water, and such other facts as may be important; and from time to time, as may be prescribed by the commissioner of the general land office, such agent shall prepare and forward to the commissioner, with such plats, a tabulated statement of all the lands in any particular locality, with the value of each section; and such plats and reports shall be filed in the general land office as a part of the records of said office; but nothing in this article contained shall be construed to require a classification of lands already classified under former laws, if such classification is satisfactory to the commissioner.

Agents to be appointed, how, etc.
(Acts of 1887, p. 83.)

To be sold to actual settlers only; conditions. (Acts of 1889, p. 51, §5.)

Art. 4287. When any portion of said land has been classified to the satisfaction of the commissioner under the provisions of this chapter or former laws, such land shall be subject to sale, but to actual settlers only, and in quantities of not less than eighty acres and in multiples thereof, nor more than one section containing six hundred and forty acres, more or less; provided, that when there is a fraction less than eighty acres of any section left such fraction may be sold; but lands classified as purely pasture lands and without permanent water thereon may be sold in quantities not to exceed four sections to the same settler; and in no event shall sale be made to a corporation, either foreign or domestic, and all sales to a settler shall be upon the express condition that any sale or transfer of such land to any corporation, directly or indirectly, before patent is issued thereon, shall ipso facto terminate the title of the purchaser or owner, and such land shall be forfeited to the state without re-entry and become again a part of the particular fund to which it formerly belonged.

County clerk to be notified of valuations. (Acts of 1887, p. 83, §6.)

Art. 4288. It shall be the duty of the commissioner of the general land office to notify in writing the county clerk of each county of the valuation fixed upon each section of land in his county, and in each county attached to it for judicial purposes, which he offers for sale, which notification shall be kept by the clerk in his office and recorded in a well-bound book, which shall be open to public inspection.

Prices. Ib. §7.

Art. 4289. All lands belonging to the public free schools, university and the several asylum funds, shall be sold at not less than two dollars per acre. All sections of land having permanent water on, or bordering thereon, shall be sold at not less than three dollars per acre, and no less than one hundred and sixty acres shall be sold, except in cases where a fractional part of a section less than one hundred and sixty acres is unsold, in which case the entire fractional part of such survey shall be sold; provided, that no watered portion of any section shall be sold unless there is permanent water on, or bordering on, the part of said section remaining unsold; and all timber land shall be sold at not less than five dollars per acre. By timber lands here used is meant lands valuable chiefly for the timber thereon.

Purchase, how made. (Acts of 1889, p. 51.)

Art. 4290. Any bona fide actual settler who may reside on any part of the lands the sale of which is authorized by this chapter shall have the right, for a period of six months after the same shall have been appraised, to purchase such quantity of land as may be limited by this chapter, to include his improvements, upon complying with the provisions of this chapter regulating sales as in other cases, and such lands shall be appraised without reference to the improvements thereon; provided, that any bona fide settler who has heretofore purchased or may hereafter purchase one section of agricultural or watered land, and no more, shall have the right to purchase three dry and strictly pastoral sections upon his making oath that he is not acting in collusion with others for the purpose of buying the land for any other person or corporation, and that no other person or corporation is directly or indirectly interested in the purchase of the same.

Sales, how made. (Acts of 1887, p. 85, §9.)

Art. 4291. All sales shall be made by the commissioner of the general land office or under his direction, and he shall prescribe suitable regulations whereby all purchasers shall be required to reside upon, as a home, the land purchased by them for three consecutive years next succeeding the date of their purchase. Such regula-

tions shall require the purchaser to reside upon the land for the three consecutive years herein mentioned, and to make proper proof of such residence and occupancy to the commissioner of the general land office within one year next after the expiration of said three years by his affidavit, corroborated by the affidavits of three disinterested and credible citizens of the county, to be certified to by some officer of the county wherein the land is situated authorized to administer oaths. Any person desiring to purchase land in accordance with the provisions of this law shall forward his application to the commissioner, particularly describing the land sought to be purchased, which application shall in all cases, be accompanied with the affidavit of the applicant, in effect that he desires to purchase the land for a home, and has in good faith settled thereon; and he shall also swear that he is not acting in collusion with others for the purpose of buying the land for any other person or corporation, and that no other person or corporation is interested in the purchase save himself. The purchaser shall transmit to the treasurer of the state one-fortieth of the aggregate purchase money for the particular tract of land and send to the commissioner his obligation to the state duly executed, and binding the purchaser to pay to the state on the first day of August of each year thereafter until the whole purchase money is paid, one-fortieth of the aggregate price with interest thereon from date at the rate of five per cent per annum on the whole unpaid purchase money, which interest shall also be payable on the first day of August of each year; and upon receipt of one-fortieth of the purchase money by the treasurer, and the affidavit and obligation aforesaid by the commissioner, the sale shall be deemed and held effective from the date the affidavit and obligation are filed in the general land office; provided, that if the land applied for be timbered land, then the purchaser shall be required to pay the full amount of the purchase money at the time of his purchase.

Art. 4292. All purchasers shall have the option of paying the purchase money for their lands in full at any time after they have occupied the same for three consecutive years; and when they have made such payment in full, together with the proof that they have occupied the land and homestead for three consecutive years, they shall be entitled to receive patents for the same upon payment of the patent fees prescribed by law. Purchasers may also sell their land at any time after sale is effected under this law, and in such cases the vendee, or any subsequent vendee, may file his own obligation with the commissioner of the general land office, together with the duly authenticated conveyance, or transfer, from the original purchaser, and the intermediate vendee's conveyance or transfer, if any there be, duly recorded in the county where the land lies, or to which it may be attached for judicial purposes, together with his affidavit stating that he desires to purchase the land for a home, and that he has in good faith settled thereon, and that he is not acting in collusion with others for the purpose of buying the land for any other person or corporation, and that no other person or corporation is interested in the purchase save himself; and thereupon the original obligation may be surrendered or cancelled, and the vendee shall become the purchaser direct from the state, and be subject to all the obligations and penalties prescribed by this law, and the original purchaser shall be absolved from further liability thereon; provided, that whenever a town shall be located and established upon

Option of purchaser to pay, when. (Acts of 1887, p. 86.)

any land sold under this or any former law, the purchaser or his vendee shall be permitted to pay the entire balance of principal and interest due the state upon such land, and obtain a patent therefor at any time; but no such payment shall be permitted or patent issue until such purchaser or owner of such land shall file in the general land office a certified plat of such town, made by the proper surveyor of the county, which shall be accompanied by the affidavit of the owner of such land, corroborated by the affidavit of five disinterested and credible citizens of the county, to the effect that a town, giving its name, has been located and established upon the land, and that there has been erected therein, and being occupied by bona fide citizens, twenty business and residence houses, or either or both.

Time in which
interest may
be paid.
(Acts of 1891,
p. 180.)

Art. 4293. If, upon the first day of November of any year, the interest due for the year next preceding on any obligation remains unpaid, the commissioner of the general land office shall endorse on such obligation "land forfeited," and shall cause an entry to that effect to be made on the account kept with the purchaser, and thereupon said land shall be forfeited to the state, without the necessity of re-entry or judicial ascertainment, and shall revert to the particular fund to which it originally belonged, and be resold under the provisions of this chapter, or any future law; provided, if any purchaser shall die, his heirs or legal representatives shall have one year in which to make payment after the first day of November next after such death; and if any purchaser shall fail to reside upon and improve in good faith the land purchased by him, he shall forfeit said land and payment thereon made, to the state, in the same manner as for non-payment of interest, and such land shall again be for sale, as if no such sale or forfeiture had occurred; or, if he shall fail to make the proof of occupancy within the time and in the manner prescribed by the regulations of the commissioner of the general land office, as provided for in article 4291, he shall in like manner forfeit the land and all payments thereon to the state; provided further, that nothing in this section contained shall be construed to inhibit the state from instituting such legal proceedings as may be necessary to enforce such forfeiture, or to protect any other right to such land; which suits may be instituted by the attorney-general under the direction of the governor, in the proper court of the county in which the land lies; provided, this article shall be printed on the back of the receipt.

Applications,
etc., to remain
on file in land
office.
(Acts of 1887,
p. 87, §12.)

Art. 4294. The commissioner of the general land office shall retain in his custody as records of his office all applications, affidavits, obligations and all other papers relating to the sales of said lands, and shall cause to be kept accurate accounts with each purchaser. All purchase money due upon lands, as well as accrued interest and all other moneys arising from the sales or leases of said lands, shall be paid by the purchaser or lessee direct to the treasurer of the state, and who shall execute duplicate receipts for all sums of money paid to him under the provisions of this law, one of which receipts shall be delivered to the purchaser or his agent and the other transmitted to the commissioner of the general land office.

Sales of tim-
ber.
(Acts of 1889,
p. 51.)

Art. 4295. The commissioner of the general land office shall adopt such regulations for the sale of the timber on timbered lands as may be deemed necessary and judicious, such regulations to be subject to the approval of the governor. Such timber shall not be sold for less than five dollars per acre cash, except in such cases as the commissioner may ascertain by definite examination of a state agent

that any particular section is sparsely timbered or contains timber of but little value, in which case he shall be authorized to sell the timber on said section at the best price, on the best terms practicable; provided, such timber is sold at not less than two dollars per acre. And in no case shall less than one section of timbered land be sold to any purchaser, except in cases of fractional sections, which may be sold under the provisions of this chapter. The purchaser shall have five years from the date of his purchase within which to remove the timber therefrom, and in case of failure to do so, such timber shall be forfeited to the state without judicial ascertainment; provided, that all timbered lands from which the timber has been cut and taken off may be placed on the market and sold for not less than two dollars per acre, as other lands are sold under the provisions of this chapter.

Art. 4296. The public lands, and all lands belonging to the public free schools, asylums, or university fund, shall be leased by the commissioner of the general land office under the provisions of this chapter. All of such lands lying west of the Pecos river, and all of such lands lying south of the Texas and Pacific railroad, except in the counties of Concho, McCulloch, Coke, Sterling, Glasscock, Midland, Ector, Tom Green, Howard and Martin, and all university lands, shall be leased for a period of not longer than ten years; and all other such lands lying north of the Colorado river and north of the Texas and Pacific railroad, and the counties hereinbefore excepted from the ten years' lease, shall be leased for a period not longer than five years, and the lessee shall pay an annual rental of four cents per acre for all lands leased; provided, that the university lands may be leased at three cents per acre per annum; which rental shall be paid each year in advance, the first payment to be made at the time the lease is executed; and if at the termination of any lease any of such lands are not in demand for actual settlement they may be again leased for another five years, and the lessee thereof whose term of lease has expired shall have the refusal of such land as he has been leasing on the terms and at the price that may be fixed therefor by the commissioner of the general land office, and all leases shall be executed under the hand and seal of the commissioner of the general land office, and shall be delivered to the lessee or his duly authorized agent, and such leases shall not take effect until the first payment of annual rent is paid and the lease duly filed for record in the county where the land lies, or to which it may be attached for judicial purposes, and it shall not be necessary for the commissioner to acknowledge such lease before the same is placed on record.

Terms of
leases.
(Acts of 1891,
p. 180.)

Art. 4297. Any person desiring to lease any portion of the public lands belonging to any of the funds mentioned in this chapter the sale and lease of which is not provided for by any other law, shall make application in writing to the commissioner of the general land office, specifying and describing the particular lands he desires to lease; thereupon the commissioner, if satisfied the lands are not in demand for purposes of actual settlement, and that such lands can be leased without detriment to the public interest, shall notify the applicant in writing that his proposition to lease is accepted, and thereupon he shall execute and deliver to the lessee in the name of the state a lease of said land for such terms as may be agreed upon, not longer than the period of time fixed by this chapter, according to its location, and deliver the same to such lessee when satisfied

Application,
etc., how
made.
Ib. §15.

that the lessee has paid to the treasurer of the state the rental for one year in advance. No lands which are now or which may hereafter be classified as grazing lands within the territory where ten years lease is authorized, as set forth in the preceding article, shall be subject to sale during the term of the lease contract thereof, and the possession of the lessee shall not be disturbed during the term of his lease.

Rent to be paid, how. (Acts of 1887, p. 88, §16.)

Art. 4298. All lessees shall pay the annual rents due for leased lands directly to the treasurer of the state, who shall execute receipts in duplicate for each payment made by any lessee, one of which receipts shall be delivered to the lessee and the other transmitted to the commissioner of the general land office. The treasurer shall cause to be kept an accurate account with each lessee, and the commissioner of the general land office shall file in his office all applications and other papers relating to leases, and keep a record of all leases made, which papers shall constitute a part of the records of his office.

Lease cancelled, when. (Ib. §17.)

Art. 4299. If any lessee shall fail to pay the annual rent due in advance for any year, within sixty days after such rent shall become due, the commissioner of the general land office may declare such lease cancelled, by a writing under his hand and seal of office, which writing shall be filed with the papers relating to such lease, and thereupon said lease shall immediately terminate, and the lands so leased shall become subject to purchase or lease, as the commissioner may determine for the best interest of the state. And during the continuance of all leases, and after forfeiture, the state shall have a lien upon all the property upon the leased premises to secure the payment of all rents due, which lien shall be prior and superior to all other liens whatsoever, and it shall not be essential to the preservation or validity of such lien that it shall be reserved in the instrument of lease.

Land inclosed or used without authority. (Acts of 1887, p. 89, §20.)

Art. 4300. If the governor is informed at any time, upon the affidavit of some credible person, that any portion of the public lands, or lands belonging to the public free school, asylum or university funds, have been inclosed, or that fences have been erected thereon without authority of law, he is authorized, in his discretion, to direct the attorney-general to institute suit in the name of the state for the recovery of such land and damages for the use and occupation of such land and the removal of such inclosures and fences. Such suit may be instituted in the district court of any county where the land, or a portion thereof, is situated, or in the district court of Travis county; and upon application of the attorney-general, and without affidavit or bond, the clerk of the court in which suit is instituted shall issue a writ of sequestration, directed to any sheriff of the state of Texas, commanding and requiring such officer to take such land and all property thereon into his actual custody, and the same hold subject to the further orders of the court. Such writ of sequestration may be executed by any sheriff of the state into whose hands it may be delivered, and it shall be the duty of any sheriff into whose hands it may come to proceed and execute such writ, and the governor is required, in his discretion, to furnish such sheriff with the necessary force of volunteer militia or other military force of the state to accomplish the purposes of the writ and to execute the process of the court. The defendant in such writ may replevy, as in ordinary cases, by giving bond as prescribed by law, and such cases shall have precedence on the docket and stand for

trial before all other causes; and in case judgment is recovered by the state in such suit the court shall order such inclosures or fences to be removed, and shall tax the costs of the suit, including the cost of the military force, if any, against the defendant; and all property found upon the land belonging to the defendant shall be liable for such costs and damages in addition to the personal liability of the defendant. Appeals may be prosecuted from all judgments in such cases as in ordinary cases, except that the state shall not be required to give bond to perfect its appeal, and such cases on appeal shall have precedence over all other cases.

Art. 4301. The commissioner of the general land office, under the direction of the governor, may withhold from lease any agricultural lands necessary for purposes of settlement, and no agricultural lands shall be leased if in the judgment of the commissioner they may be in immediate demand for settlement, but such lands shall be held for settlement and sold to actual settlers only, under the provisions of this law, and all sections or fraction of sections in all counties organized prior to the first day of January, 1875, except El Paso, Pecos and Presidio counties, which sections are detached and isolated from other public lands, may be sold to any purchaser, except to a corporation, without actual settlement, at not less than two dollars per acre, upon such terms as the commissioner of the general land office may prescribe.

Lands may be withheld from lease, when. (Acts of 1889, p. 53, §22.)

Art. 4302. Leaseholds created under the provisions of this chapter shall be exempt from all taxation.

Exempt from taxation. (Acts of 1887, p. 91, §24.)

Art. 4303. Nothing in this law shall be construed to impair, interfere with or in any manner affect any lease or sale, or the rights growing out of the same, made under former laws, of the lands herein referred to; provided, that any person or persons who have heretofore leased lands from this state at prices fixed by the land board, and whose leases have not yet expired, shall have their rental for the remainder of their unexpired term reduced to the prices charged under this law for the lease of similar lands.

Vested rights not to be disturbed. *Ib.*

Art. 4304. The commissioner of the general land office is authorized and required 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 subdivisions have been made and field-notes filed in the general land office in accordance with said act; and if it should appear from actual survey on the ground, conforming to the lines and corners of said original subdivisions, that there is any subdivision more or less than one hundred and sixty acres, the commissioner of the general land office shall issue patents for the number of acres contained in said subdivisions upon the purchaser paying into the state treasury the amount per acre that the subdivision may have been appraised at; provided, that this article shall not affect any rights heretofore acquired under existing laws relative to university lands.

Regulations for issuance of patents. (Acts of 1879, p. 39.)

[Note.—Article 4305 omitted as repealed by the report of the joint committee on amendments to the Revised Civil Code, No. 79; Sen. Jour., 1895, p. 482.]

Art. 4306. The commissioner of the general land office is hereby authorized to lease for a term of not exceeding ten years, at a price not less than two cents per acre, the three hundred and twenty leagues of land set apart and surveyed in the year 1882 for the

Lease of unorganized county school lands. (Acts of 1889, p. 108, §1.)

unorganized counties of the state, situated in the counties of Hockley, Cochran, Bailey, Lamb, Andrews, Martin, Dawson and Gaines, under the same rules and upon the same terms as are prescribed by law for the lease of the university lands. The proceeds of such lease shall be paid into the state treasury and become a part of the available school fund of the state.

Control to vest
in county,
when.
Ib. §2.

Art. 4307. Whenever any county entitled to said lands shall be organized, the control of said lands belonging to such county shall vest in the commissioners' court of such county, and any lease money thereafter becoming due shall be payable to such county, but all leases executed before such organization of the county shall be binding for the full term thereof.

TITLE XC.

Public Weighers.

	Article		Article
To be appointed by the governor.....	4308	Factor or commission merchant not to	
Oath and bond.....	4309	employ, etc	4314
Duties	4310	Liabie on bond, when.....	4315
May appoint deputies.....	4311	Owner may weigh, etc.....	4316
Shall keep accurate scales.....	4312		

Article 4308. The governor is hereby authorized and required to appoint five competent persons as public weighers in every city which receives annually over one hundred thousand bales of cotton, on sale or for shipment. In all cities or towns or railroad stations which receive annually less than one hundred thousand bales of cotton, the county commissioners' courts of the counties in which said cities and towns or railroad stations are situated, should the commissioners' court deem the same necessary to protect the sellers, may order an election, at which all the qualified voters of the county may vote for one or more public weighers; provided, that the county commissioners' court may provide by appointment for cotton weighers, to hold office until the next general election and until their successors are qualified; provided, that in towns and at railroad stations outside of county seats the county commissioners' court may appoint one or more public weighers; provided, nothing herein contained shall be construed so as to prevent any other person from weighing cotton, wool or hides when requested so to do by the owners thereof. All public weighers shall hold their offices for two years and until their successors are appointed or elected as the case may be and qualified, subject to removal for misconduct or incompetency in office; provided, that no person shall be appointed a public weigher who is in any wise interested in the purchase or sale of cotton, wool, sugar or hides received to be weighed, either as principal, agent, factor, commission merchant or employe.

To be appointed by governor, when. (Acts of 1883, p. 83.)

By county commissioners' court, when.

Term of office.

Art. 4309. 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; he shall also execute a bond with good and sufficient sureties, in the sum of ten thousand dollars, payable to the county judge of the county in which the appointment is made and his successors in office, conditioned for the faithful performance of his official duties; provided, that in cities or towns receiving for sale or shipment less than twenty-five thousand bales of cotton or sacks of wool, the bond of public weighers shall be two thousand dollars.

Shall take oath and give bond. Ib.

Art. 4310. 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

Duties. (Acts of 1879, p. 116.)

or factors, after first certifying the correctness thereof. And 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 agent, or the purchaser thereof on demand.

May appoint
deputies.
Ib. §4.

Art. 4311. The public weigher shall have power to appoint one or more deputies, not to exceed three, who shall subscribe and take an oath similar to the one herein provided to be taken by the public weigher. The deputation and oath shall be recorded in the office of the county clerk before he shall enter upon the discharge of his duties. The public weigher shall be responsible for the acts of his deputies and no person shall be appointed deputy who is in anywise interested in the purchase or sale of any cotton, wool, sugar or hides required to be weighed, either as principal, agent, factor, commission merchant or employe.

Shall keep ac-
curate scales.
Ib. §5.

Art. 4312. 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.

[Note.—Article 4313 omitted as repealed by the report of the joint committee on amendments to the Revised Civil Code, No. 81; Sen. Jour., 1895, p. 482.]

Factor or com-
mission mer-
chant not to
employ other
weigher, etc.
Ib. §7.

Art. 4314. It shall not be lawful for any factor, commission merchant or any other person or persons to employ any other than a regularly appointed and qualified public weigher or his deputy to weigh any cotton, wool, sugar or hides required to be weighed, sold or offered for sale in any city having a public weigher duly qualified; and any person or persons violating this provision shall be liable, at the suit of the public weigher of any such city, or either of such public weighers, to damages in any sum not less than five dollars for each bale of cotton, bale or sack of wool, hogshead or barrel of sugar or bale of hides so unlawfully weighed, to be recovered in any court of such county having jurisdiction thereof; provided, any owner shipping any produce named in this article to any town or city having a public weigher may, by written instructions, authorize his factor, commission merchant or agent to have such produce weighed by private weighers if he prefers so to do, and in all such cases the prohibitions and penalties embraced in this article and in the preceding articles shall not apply.

Liabie on
bond, how.
(Acts of 1883,
p. 83, §9.)

Art. 4315. Any public weigher who shall violate any of the provisions of this law, or fail to comply with any of such provisions, shall be liable, at the suit of any person injured, upon his bond for damages that may have accrued to such person by such violation or failure, and may also be removed from office by the commissioners' court upon satisfactory evidence being furnished of his misconduct or incompetency; provided, that such public weigher shall have five days' notice to appear before said court and offer testimony in his behalf.

Owner of
cotton, etc.,
to weigh it
himself.
Ib.

Art. 4316. [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 XCI.

Public Health.

Article	Article
Powers and duties of state health officer, etc.	Adulterated articles defined..... 4319
Same4317	Regulations to be printed.....4320
Same4318	

Article 4317. The state health officer shall take cognizance of the interests of the public health as it relates to the sale of food and drugs, and the adulterations of the same, and make all necessary investigations and inquiries relating thereto. He shall also have the supervision of the appointment of public analysts and chemists, and upon his recommendation, whenever he shall deem any such officers incompetent, the appointment of any and every such officer shall be revoked, and be held to be void and of no effect. The state health officer shall adopt such measures as may seem necessary to facilitate the enforcement of this law, and prepare rules and regulations with regard to the proper method of collecting and examining articles of food or drugs, and for the appointment of the necessary inspectors and analysts, and the said health officer shall be authorized to expend an amount not exceeding two thousand dollars for the purpose of carrying out the provisions of this law.

Powers and duties of state health officer, in. (Acts of 1883, p. 72.)

Art. 4318. It shall be the duty of the state health officer to prepare and publish from time to time lists of the articles, mixtures or compounds declared to be exempt from the provisions of this law, in accordance with subdivision 7 of the succeeding article. The state health officer shall also from time to time fix the limits of variability permissible in any article of food, or drug, or compound, the standard of which is not established by any national pharmacopoeia.

Same. Ib. §2.

Art. 4319. An article shall be deemed adulterated within the meaning of this title:

Adulteration defined. Ib. §3.

(a) In the case of drugs—

1. If when sold under or by a name recognized in the United States Pharmacopoeia it differs from the standard of strength, quality or purity laid down therein.

2. If when sold under or by a name not recognized in the United States Pharmacopoeia, but which is found in some other pharmacopoeia, or other standard work on materia medica, it differs materially from the standard of strength, quality or purity laid down in such work.

3. If its strength or purity fall below the professed standard under which it is sold.

(b) In the case of food or drinks—

1. If any substance or substances has or have been mixed with it so as to reduce or lower or injuriously effect its quality or strength.

2. If any inferior or cheaper substance has been substituted wholly or in part.

3. If any valuable constituent of the article has been wholly or in part abstracted.

4. If it be an imitation of or be sold under the name of another article.

5. If it consists wholly or in part of a diseased or decomposed or putrid or rotten animal or vegetable substance, whether manufactured or not; or in the case of milk, if it is the product of a diseased animal.

6. If it be colored, or coated, or polished, or powdered, whereby damage is concealed, or it is made to appear better than it really is, or of greater value.

7. If it contains any added poisonous ingredient, or any ingredient which may render such article injurious to the health of a person consuming it; provided, that the state health officer may, with the approval of the governor, from time to time declare certain articles or preparations to be exempt from the provisions of this law; and provided further, that the provisions of this law shall not apply to mixtures or compounds recognized as ordinary articles of food; provided, that the same are not injurious to health, and that the articles are distinctly labeled as a mixture, stating the components of the mixture.

Regulations
to be printed.
Ib. §9.

Art. 4320. All the regulations and declarations of the state health officer made under this law from time to time and promulgated, shall be printed for general distribution.

TITLE XCII.

Quarantine.

Article	Article
Governor may issue proclamation.....4321	Incoming vessels4333
May appoint state health officer.....4322	Vessels from infected ports.....4334
His compensation4323	Payment of fine, etc.....4335
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Local authorities to be subordinate to state, when4328	Commissioners' court may direct, etc., to declare quarantine4340
Shelter to persons detained.....4329	Bond of health officer at Galveston.....4341
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Governor to appoint local health officer, when4332	

Article 4321. The governor is empowered to issue his proclamation declaring quarantine on the coast, or elsewhere within this state, whenever in his judgment quarantine may become necessary, and such quarantine may continue for any length of time as in the judgment of the governor the safety and security of the people may require.

Governor empowered to issue proclamation, when. (Acts of 1891, p. 188.)

Art. 4322. 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 physicians of the state of Texas, one physician, who shall be known as health officer of the state, and shall from previous and active practice be familiar with yellow fever and pledged to the importance of both quarantine and sanitation.

May appoint state health officer. Ib.

Art. 4323. Such health officer shall, during the time he is engaged in the public service, receive for his services twenty-five hundred dollars per year, and his necessary traveling expenses incurred in the discharge of his legitimate duties, a bill of which must be made out in detail and approved by the governor, on which approved account the comptroller shall issue his warrant on the treasurer for the amount of said approved account.

Compensation. (Amend. 1895, p. 142.)

Art. 4324. Whenever the governor has reason to believe that the state of Texas is threatened at any point or place on the coast, border or elsewhere within the state with the introduction or dissemination of yellow fever contagion, or any other infectious and contagious disease that can and should, in the opinion of the state health officer, be guarded against by state quarantine, he shall, by proclamation, immediately declare said quarantine against any and all such places, and direct the state health officer to promptly establish and enforce the restrictions and conditions imposed and indicated by said quarantine proclamation, and when from any cause the governor can not act, and the exigencies of the threatened danger require immediate action, the state health officer is empowered to declare quarantine as prescribed in this article, and maintain the same until the governor shall officially take such action as he may see proper.

May issue proclamation, when. (Acts of 1891, p. 188, §4.)

Quarantine laws to be in force as governor and health officer may direct.
Ib. §5.

Art. 4325. The laws in regard to state quarantine shall remain and be in full force and operation on the coast or elsewhere in the state as the governor or health officer may direct, and be enforced as heretofore, with such additional changes as the provisions of this title prescribe, and with such additional changes in station and general management as the governor may think proper.

Local quarantine.
Ib. §6.

Art. 4326. The law in regard to local quarantine by the inhabitants of any point or points on the coast or elsewhere in the state shall remain in full force when in conformity with this title; provided, that in all differences and disputes between any such points, contiguous or remote, within this state, such differences and disputes shall be immediately by the local health authorities, if any, 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 state health officer to such points with instructions to investigate the same and report the exact condition of things, and upon investigation of such report shall issue his proclamation declaring the determination of the issue, and by said proclamation the aforesaid differences shall be governed and determined.

Bond of local health officer.
Ib. §7.

Art. 4327. Said health officer shall give a bond with two good and sufficient sureties, in the sum of ten thousand dollars, made payable to the governor, to be approved by him, and conditioned for the honest and impartial performance of his duties, and such health officer shall hold his position for the term of two years, subject, however, to removal at any time by the governor, whenever in his judgment the public good demands.

Local to be subordinated to state authorities.
Ib. §8.

Art. 4328. Whenever quarantine is declared by the governor or by any county or corporate authorities in the state, it shall be the duty of such authorities 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 the public safety may demand; provided, that all county and municipal quarantine shall be subordinate, subject to and regulated by such rules and regulations as may be prescribed by the governor or state health officer.

Shelter, etc., to be furnished by health officer to persons detained.
Ib. §9.

Art. 4329. It shall be the duty of the state health officer to furnish persons detained by him with necessary shelter and subsistence (not including crews of vessels, except such as are removed by the quarantine officers from infected vessels), and to provide all other things essential for the protection and comfort of those held in quarantine, and all such expenses authorized by the state health officer and approved by the governor shall be paid by the state.

Expenses, etc. (Acts of 1895, p. 142.)

Art. 4330. All the costs and expenses of enforcing and maintaining the general quarantine or such as are ordered by the governor or state health officer shall be paid out of the fund appropriated for quarantine purposes. All quarantine officers appointed by the governor shall be selected and commissioned by the governor of the state, and shall be paid by the state, and all health authorities of the state, or of any county or city thereof, shall obey the rules and regulations prescribed by the governor or state health officer. The regular officers in charge of regular established quarantine stations on the coast shall be allowed one hundred and fifty dollars per month while on duty at their respective stations; provided, that the provisions of this chapter shall not apply to the port of Galveston; and provided, that the officer in charge of said station shall receive two hundred dollars per month. Temporary officers, or those commissioned by the governor to guard against threatened epidemics, and

Those stationed at railway crossings on the Rio Grande shall receive one hundred and fifty dollars per month while on duty, and such other pay for extra expenses actually incurred as may be deemed just by the governor and state health officer. All quarantine officers, whether of towns, cities, counties or state, shall be authorized to administer oaths to any person or persons suspected of violating any quarantine regulations, and any person or persons swearing falsely shall be punished according to the provisions of the Penal Code.

Art. 4331. [4091] It is hereby made the duty of any county, town or city authority upon the coast or elsewhere in Texas, at as early a day as practicable after the promulgation of the governor's proclamation declaring quarantine, to provide suitable stations where they are not now provided, at sufficient distance from the usual places of landing of vessels, or the depots of railroads coming into their respective counties, towns or cities, and to select, appoint and employ a competent physician as health officer, subject to the approval of the governor, at such stations, and to furnish said officer with such guards, employes and other things as may be necessary to render such quarantine effective; and said county, town or city authorities may provide for the establishment and maintenance of quarantine, subordinate, subjected to and regulated by such rules and regulations as the governor and state health officer may prescribe.

Stations to be provided.
(Acts of 1883,
p. 17.)

Art. 4332. Whenever, on the coast of Texas or elsewhere in this state, the authorities of any county, town or city jail, refuse or neglect to establish quarantine as provided in the preceding article, then and in that event the governor shall have the power and it shall be his duty to appoint a health officer and to prescribe such regulations for the government of the same as he may deem necessary.

Governor may appoint local health officer, when.
(Acts of 1891,
p. 186.)

Art. 4333. [4093] It shall be the duty of all health officers and all quarantine authorities to stop each and every vessel from any infected port or district, notwithstanding the said vessel may have a clean bill of health, if deemed necessary (and such health officers or quarantine authorities shall have power 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 or district; and such officers and authorities shall detain said vessel at quarantine for such length of time as may be prescribed by the governor and state health officer in their rules and regulations governing quarantine; and all such officers and authorities may use force if necessary in order to discharge the duties imposed upon them by the provisions of this title and the rules and regulations of the governor and state health officer.

Incoming vessels to be stopped.
(Acts of 1883,
p. 17.)

Art. 4334. Any vessel arriving at any of the quarantine stations of this state, designated by the proper authorities, from any infected port or district without a clean bill of health from the proper officers from said port or district, shall be taken possession of by the health officer or other quarantine authority at the station at which said vessel arrives, and be held by the same until all fines that may have been assessed against the master of said vessel for a violation of the quarantine laws, rules and regulations have been paid, or until said vessel shall have been replevied in accordance with law.

Vessels from infected ports.
(Acts of 1891,
p. 188, §12.)

Art. 4335. 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 rules shall apply as in case of other vessels placed in quarantine.

Payment of fine, etc.
Ib. §13.

Expenses to be itemized. (Acts of 1883, p. 18.)

Art. 4336. [4097] It shall be the duty of the county, town or city authorities aforesaid, as soon as quarantine ceases to exist, to forward to the comptroller of the state an itemized account of all receipts and expenditures made by them, and when approved by the governor and state health officer, said comptroller shall draw his warrant upon the treasurer for the payment of any balance that may be due said authorities or either of them, and pay into the treasury any excess of receipts over expenditures as a credit to the quarantine fund.

Corporate authorities may establish quarantine, when. Ib.

Art. 4337. [4098] Nothing contained in this title shall be construed to prevent any town, city or county from establishing any quarantine which they may think necessary for the preservation of the health of the same; provided, that the rules and regulations of such quarantine be not inconsistent with the provisions of this title, and be consistent with and subordinate to said provisions and the rules and regulations prescribed by the governor and state health officer.

Municipal authorities may co-operate, how. (Acts of 1879, S. S., p. 9.)

Art. 4338. The municipal authorities of towns and cities, and commissioners' courts of the counties wherein such towns and cities are situated, may co-operate with each other in making such improvements connected with said towns, cities and counties as may be deemed by said authorities and courts necessary to improve the public health and to promote efficient sanitary regulations; and by mutual agreement they may provide for the construction of said improvements and the payment therefor.

County physician. (Acts of 1891, p. 186, §14.)

Art. 4339. It shall be the duty of every county judge within the state of Texas, after each general election of state and county officers, or as soon thereafter as practicable, to select from the physicians of the respective counties one of high character and recognized ability, who shall be known as "county physician." It shall be the duty of said county physician to establish, maintain and enforce local quarantine for his county whenever declared by proclamation of commissioners' court; to furnish supplies, select medical assistants, guards, and perform all other duties coincident to a reasonable, economic and consistent quarantine. The salary of county physician must be agreed to and be paid by their respective counties, but the county physician shall receive no salary except when quarantine has been established and he is actually engaged in service. County physicians shall in all quarantines establish rules in harmony and accord with the rules prescribed by the state health officer; shall respect and obey instructions from said officer, and make written reports to him of their official acts whenever required to do so, giving cause and history of epidemic, number of deaths and recoveries, and all other facts of statistic or scientific value.

Commissioners' court may direct county physician to declare quarantine, when. Ib. §15.

Art. 4340. Whenever the commissioners' court of any county has reason to believe that they are threatened at any point or place within or without the county limits with the introduction or dissemination of a dangerous, contagious or infectious disease that can and shall be guarded against by quarantine, they may direct their county physician to declare and maintain said quarantine against any and all such dangerous diseases; to establish, maintain and supply stations or camps for those held in quarantine; to provide hospitals, tents or pest houses for those sick of contagious and infectious disease; to furnish provisions, medicine and all other things absolutely essential for the comfort of the well and the convalescence of the sick. The county physician shall keep an itemized account of all

lawful expenses incurred by local quarantine, and his county shall assume and pay them as other claims against the county are paid. Chartered cities and towns are embraced within the purview of this article, and the mere fact of incorporation does not exclude them from the protection against epidemic diseases given by the commissioners' court to other parts of their respective counties. The medical officers of chartered cities and towns can perform the duties granted or commanded in their several charters, but must (if the county physician is not, as is frequently the case, the city physician also) be amenable and obedient to rules prescribed by the state health officer. This article, however, must not be construed as prohibiting any incorporated town or city from declaring, maintaining and paying for a local quarantine.

Art. 4341. The quarantine or health officer at Galveston, Texas, shall give bond, with two or more good and sufficient sureties, payable to the governor, in the sum of ten thousand dollars, conditioned for the care and preservation of any steam vessel or vessels belonging to the state at his station, and for the faithful performance of his duty.

Bond of health officer at Galveston. *Ib.* §16.

Art. 4342. It is hereby made the duty of the governor and state health officer, upon completion of the disinfecting warehouse at Galveston, or any port on the coast of Texas, to prescribe such rules and regulations as may be necessary for the disinfection of all vessels and their cargoes and passengers arriving at said ports from any infected port or district; the object of such rules and regulations being to provide safety for the public health of the state without unnecessary restrictions upon commerce and travel.

To prescribe rules, etc. *Ib.* §17.

Art. 4342a. The state health officer be and is hereby authorized, with the advice and consent of the governor, to sell to the best advantage of the state, for cash, any property in the quarantine service that is useless, and to apply the proceeds thereof to the general revenue of the state of Texas, and make due report of said sale or sales to the governor.

Sale of condemned property. (Acts of 1895, p. 2.)

TITLE XCIII.

Quo Warranto.

	Article		Article
Petition for, when presented.....	4343	Judgment of court.....	4347
Joinder of parties, when.....	4344	Law cumulative	4348
Citations to issue, etc.....	4345	Venue of suit for state office.....	4349
Proceedings as in civil cases.....	4346		

Quo warranto, when. (Acts of 1879, S. S., p. 43.)

Article 4343. In case any person shall usurp, intrude into or unlawfully hold or execute, or is now intruded into, or now unlawfully holds or executes any office or franchise, or any office or any corporation created by the authority of this state, or any public officer shall have done or suffered any act which by the provisions of law works a forfeiture of his office, or any association of numbers of persons shall act within this state as a corporation without being legally incorporated, or any incorporation does or omits any act which amounts to a surrender or a forfeiture of its rights and privileges as a corporation, or exercises power not conferred by law, or if any railroad company doing business in this state shall charge an extortionate rate for the transportation of any freight and passengers, or refuse to draw or carry the cars of any other railroad company over its line as required by the laws of this state, the attorney-general, or district or county attorney of the proper county or district, either of his own accord or at the instance of any individual relator, may present a petition to the district court of the proper county, or any judge thereof, in vacation, for leave to file an information in the nature of a quo warranto in the name of the state of Texas; and if such court or judge shall be satisfied that there is probable ground for the proceeding, the court or judge may grant the petition and order the information to be filed and process to issue.

Joinder of parties in one action, when. Ib. §2.

Art. 4344. When it appears to the court or judge that the several rights of divers parties to the same office or franchise may properly be determined on one information, the court or judge may give leave to join all such persons in the same information in order to try their respective rights to such office or franchise.

Citations to issue. Ib. §3.

Art. 4345. When the information is filed, as hereinbefore provided, the clerk shall issue citations in like form as in civil suits, commanding the defendant to appear at the return term of said court to answer the relator in an information in the nature of a quo warranto. If the information is filed in vacation the citation shall be returnable on the first day of the next succeeding term; if in term time, it may be made returnable on any day of the same term, not less than five days after the date of the writ, as shall be directed by the court.

Proceedings as in civil cases. Ib. §4.

Art. 4346. Every person or corporation who shall be cited as hereinbefore provided shall be entitled to all the rights in the trial and investigation of the matters alleged against him, as in cases of trial of civil causes in this state; and in cases of appeal, to which

either party shall be entitled, the said court shall give preference to such case and hear and determine the same at the earliest day practicable; and all such appeals shall be prosecuted to the term of the court in session, or the first term to be held, if not in session, after judgment has been rendered in the district court.

Art. 4347. In case any person or corporation against whom any such proceeding is filed shall be adjudged guilty, as charged in the information, the court shall give judgment of ouster against such person or corporation from the office or franchise, and may fine such person or corporation for usurping, intruding into or unlawfully holding and executing such office or franchise, and shall also give judgment in favor of the relator for costs of the prosecution.

Judgment of
court.
Ib. §5.

Art. 4348. The remedy and mode of procedure hereby prescribed shall be construed to be cumulative of any now existing.

Remedy
cumulative.
Ib. §6.

Art. 4349. Suits against persons illegally claiming or holding any state office or appointment as contradistinguished to a county or district office, shall be brought in the district court of Travis county.

Venue of suit
for state office.
Ib. §7.

TITLE XCIV.

Railroads.

CHAPTER ONE.

INCORPORATION OF RAILROAD COMPANIES.

	Article		Article
Not less than ten persons may form....	4350	Existence of corporation begins, when..	4355
Amount of stock subscribed and to be paid	4351	May proceed to act, when.....	4356
Articles of incorporation must contain, what	4352	Shall not be for more than fifty years..	4357
Shall be submitted to attorney-general..	4353	Manner of renewing corporation.....	4358
And filed in office of secretary of state..	4354	When authorized to be sold or conveyed under special law.....	4359
		Shall take, subject to special liens.....	4360

Not less than ten persons may form company. (Act Aug. 15, 1876, p. 141, §1.)

Amount of stock which must be subscribed and paid. *Ib.*

Articles of incorporation shall contain, what. (Acts of 1889, p. 17.)

Articles shall be submitted to attorney-general, etc. (Acts of 1876, p. 141, §2.)

Article 4350. [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.

Art. 4351. [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.

Art. 4352. [4101] The persons proposing to form a railroad corporation shall adopt and sign articles of incorporation, which shall contain—

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; provided, however, that local suburban railways may be constructed for any distance less than ten miles from the corporate limits of any city or town, in addition to such mileage as they may have within the same, and in such case the general direction shall be given from the beginning point.
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. 4353. [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.

Art. 4354. [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 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.

Shall be filed in office of secretary of state.
Ib. §3.

Art. 4355. [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.

Existence of corporation begins, when.
Ib. §5.

Art. 4356. [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.

Corporators may proceed to act, when.
Ib. §4.

Art. 4357. [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.

Corporation shall not be for more than fifty years, but, etc.
Ib. p. 144, §8.

Art. 4358. [4107] The manner of renewing a railroad corporation which has expired by lapse of time shall be as follows:

Manner of renewing corporation.
Ib.

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.

Art. 4359. Whenever any line or lines of railway or railway properties within this state are by special law authorized to be sold and conveyed, the persons contemplating or engaging for the purchase thereof may be formed into a corporation for the purpose of acquiring, owning, maintaining and operating such line or lines of railway by complying, as far as is applicable, with the requirements of this chapter. In the formation of such corporation the requirements of article 4351 and so much of article 4354 of the Revised Statutes as re-

Where authorized to be sold or conveyed under special law.
(Acts of 1891, p. 123.)

lates to the affidavit therein provided for may be dispensed with, and words applicable to the case of a purchase may be used and substituted when necessary or proper, in the articles of incorporation or elsewhere, for or in lieu of words applicable to the building or construction of a railway. And when such corporation has been formed it shall have the power to purchase, acquire, own, maintain and operate such line or lines of railway and properties pertaining thereto, and all rights, powers and privileges given by the laws of this state to railway companies, including the right to complete and extend such line or lines of railway, and to construct branch lines thereto, and any proposed extension or branch lines may be provided for and included in the original articles of incorporation, or the same may, by amendment thereto at any time thereafter, be projected and provided for by such company.

Shall take property subject to liens, etc.
Ib. §2.

Art. 4360. Every railroad company organized under the preceding article shall take the property so purchased subject to all incumbrances, judgments, claims, suits, claims for damages and for right of way against the old company and subject to all debts and claims for damages, accruing against any receiver who may have been appointed for the old company to the same extent that such property would have been liable in the hands of the railroad company from which it was purchased, and such new company may be made a party to every suit pending against the company from which it purchased, or which may be pending against any receiver of such company, to enforce any right against such new company, and the new company may be sued to enforce any such rights, without joining the old company or the receiver, and in case any judgment has been rendered against the company from which the purchase is made or against a receiver for such last named company, and for which the property is liable, execution may be issued on such judgment against such property in the possession of the new company without any suit therefor. When any corporation shall be formed under the provisions of article 4359, service of process may be had upon any agent of such corporation in any county where suit may be pending. Such service shall bind each and every railroad operated or owned under such charter, in the same manner as if it were one railroad.

CHAPTER TWO.

AMENDING OR CHANGING CHARTER.

Article	Article
May amend articles, when.....4361	May project, etc., branch line, etc., by amendment, etc.4365
How amendment, etc., shall be made.....4362	Branch line shall complete ten miles first year, etc.....4366
Shall take effect, when.....4363	
Shall not amend, when.....4364	

Corporation may amend, etc., articles, etc.
(Act Aug. 15, 1876, p. 142, §5.)
How amendment, etc., shall be made.
Ib. §5.

Article 4361. [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. 4362. [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

original 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. 4363. [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. 4364. [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. 4365. [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. 4366. [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 complete 10 miles first year, etc. Ib.

CHAPTER THREE.

PUBLIC OFFICE AND BOOKS.

Article	Article
Shall keep offices in this state.....4367	Books to be subject to inspection.....4372
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Where books to be kept and what they must contain4370	Duty of attorney-general.....4375
President must report, etc.....4371	May change public office.....4376
	Notice to be given, etc.....4377
	Domicile of corporation.....4378

Article 4367. Every railroad company chartered by this state, or owning or operating any line of railway within this state, shall keep and maintain permanently its general offices within the state of Texas at the place named in its charter for the locating of its gen- Shall keep offices in this state. (Acts of 1889, p. 130, §1.)

eral offices; and if no certain place is named in its charter where its general offices shall be located and maintained, then said railroad company shall keep and maintain its general offices at such place within this state where it shall have contracted or agreed or shall hereafter contract or agree to locate its general office for a valuable consideration; and if said railroad company has not contracted or agreed for a valuable consideration to maintain its general office at any certain place within this state, then such general offices shall be located and maintained at such place on its line in this state as said railroad companies may designate to be on its line of railway. And such railroads shall keep and maintain their machine shops and round houses, or either, at such place or places as they may have contracted to keep them for a valuable consideration received; and if said general offices and shops and round houses, or either, are located on the line of a railroad in a county which has aided said railroad by an issue of bonds in consideration of such location being made, then said location shall not be changed; and this shall apply as well to a railroad that may have been consolidated with another as to those which have maintained their original organization.

What officers
are to keep
offices in this
state.
(Acts of 1889,
p. 130, §2.)

Art. 4368. It shall be the duty of said railroad company to keep and maintain at the place within this state where its said general offices are located, the office of its president or vice-president, also the office of its secretary, treasurer, local treasurer, auditor, general freight agent, traffic manager, general manager, general superintendent, general passenger and ticket agent, chief engineer, superintendent of motive power and machinery, master mechanic, master of transportation, train master, stock and fuel agent, claim agent, and each and every one of its general offices shall be so kept and maintained, by whatever name it is known, and the persons who perform the duties of said general offices, by whatever name known, shall keep and maintain their offices at the place where said general offices are required to be located and maintained, and the persons holding said general offices of a railroad shall reside at the place and keep and maintain their offices at the place where the general offices of said railroad are required by law to be kept and maintained, and if the duties of any of the above named offices are performed by any person, but his position is called by a different name, it is hereby made the duty of said railroad company to have and maintain said offices at the place where its general Texas offices are kept and maintained as required by this chapter; provided, that if the judgment of the court shall be to forfeit the charter, then it shall allow the railroad company six months from the date of the judgment within which to comply with the requirements of this chapter, and if said railroad company shall comply within the said time no forfeiture shall occur, but if the railroad company shall not comply, then the judgment shall be final, the object and meaning of this statute being to require every railroad company owning or operating a line of railway within this state to keep and maintain its general offices within this state at such place as required herein, and the name of the above as general offices shall not be understood to allow the railroad company to have any of the offices usually known as general offices at any other place than the one it is required to keep its general offices at, and each and every railroad is hereby required to have and maintain its general offices at the place named herein.

Forfeiture for
violation of,
etc.
Ib. §3.

Art. 4369. Each and every railroad company chartered by this state, or owning, operating or controlling any line of railroad within

this state, which shall violate any of the provisions of this chapter shall forfeit the charter by which it operates its railroad in this state to the state of Texas, and it is hereby made the duty of the attorney-general of this state, upon the application of any interested party or on his own motion, to proceed at once against every railroad company owning, operating or controlling any line of railway within this state by quo warranto to forfeit the charter of the railroad company so offending or violating any of the provisions of this law, shall in addition to forfeiting the charter to that part of the railroad situated within this state be subject to a penalty of five thousand dollars for each and every day it violates any of the provisions of this chapter, said penalty to be recovered in the name of the state of Texas by a suit which shall be filed by the attorney-general in any court in this state having jurisdiction, and on the trial the court shall, if it finds that the railroad company has violated any of the provisions of this chapter, render judgment in the name of the state of Texas at the rate of the sum of five thousand dollars for each and every day said court shall find that said railroad company violated any of the provisions of this chapter. And any money recovered from any railroad company under the provisions of this law shall be paid over into the state treasury, and become a part of the available public free school fund.

Art. 4370. At the public or general offices of the said railroad companies established as provided for in this chapter the principal business of said corporation shall be conducted, and stock transferred and claims for damages settled and adjusted by duly authorized officers and agents of said corporations, and where there shall be kept for the inspection of stockholders of such corporation books in which shall be recorded—

What books shall contain; open to inspection, etc. (Acts of 1885, p. 67.)

1. The amount of capital stock subscribed.
2. The names of the owners of the stock and the amounts owned by 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 its assets and liabilities.
6. The names and places of residence of each of its officers.

Provided, that railroad corporations shall be required to keep such office at some place on the line of its road in this state, as heretofore provided.

Art. 4371. The president or superintendent of every railroad company doing business in this state shall report annually under oath to the comptroller or governor the true status of said railroad, and such other matters and things as may be inquired about by said comptroller or governor.

President shall report, etc. (Const., art. 10, §3.)

Art. 4372. 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 officer or agent of the state whose duty it may be to inspect such books.

Books to be kept, where. Ib. §4.

Art. 4373. The legislature may by committee or otherwise examine the books of any railroad corporation at such times and as often as may by said legislature be deemed necessary.

Legislature may examine. Ib. §5.

Art. 4374. It shall be unlawful for any railroad or other corporation to fail or refuse to comply with any of the provisions of this chapter, and if said railroad or other corporation shall fail or refuse to comply with any part thereof, it shall be liable to pay to the state of Texas the sum of one thousand dollars for each and every month

Penalty for failure, etc. Ib. §6.

that said railroad or other corporation shall fail or refuse to comply therewith, said sum to be recovered by the state in any court in this state of competent jurisdiction; provided, that an honest mistake in the entries in its books shall not subject a railroad company to the penalties of this article, if the office of said company shall be kept in this state, as herein provided.

Duties of attorney-general.
Ib. §7.

Art. 4375. It shall be the duty of the attorney-general of this state to bring suit against said corporations and prosecute them to judgment for any violation of the provisions of this chapter.

May change public office.
(Act Feb. 7, 1854.)
P. D. 4388.

Art. 4376. [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 a change; provided, however, that the right to make such change shall be subject to the limitations and restrictions herein contained.

Notice of establishment of public office, in first instance, shall be given.

Art. 4377. [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. 4378. [4120] The public office of a railroad corporation shall be considered the domicile of such corporation.

CHAPTER FOUR.

OFFICERS OF RAILROAD CORPORATIONS.

Article	Article		
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By-laws in regard to, not to be changed.....	4383	All officers liable, when.....	4390
Manner of voting for.....	4384		
Failure to hold election, etc.....	4385		

Board of directors.
(Act Aug. 15, 1876, p. 144, §11.)

Article 4379. [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. 4380. [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. 4381. [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 by 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. 4382. [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. 4383. [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. 4384. [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. 4385. [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. 4386. [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. 4387. [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. 4388. [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. 4389. [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 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.

Directors liable when false and fraudulent dividend is declared.
P. D. 4886.

Art. 4390. [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.....	4391	When and by what vote by-laws shall be enacted4393
Each share entitled to a vote.....	4392	

Article 4391. [4135] Every railroad corporation shall have the power to make such by-laws as it may think proper for the govern-

Power to enact by-laws. (Act Dec. 19, 1857, p. 95.)
P. D. 4911.

ment of such company, the same not being inconsistent with the charter of such company or the laws.

Each share entitled to vote, etc.
Ib.

Art. 4392. [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.

When and by what vote shall be enacted, etc.
Ib.

Art. 4393. [4137] No by-laws 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.....	4394
Directors may require payment of stock, etc.....	4395
Sale of stock when owner neglects to pay.....	4396
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Notice shall state, what.....	4403
Increase may be not exceeding amount named in notice.....	4404
Order of resolution increasing shall be recorded.....	4405
President and directors shall furnish statement to stockholders at regular meeting.....	4406
May be required to furnish statement at special meeting.....	4407
Stockholders may fix amount of loans and interest thereon.....	4408
Stockholders may remove officers and elect others.....	4409
No stock shall be issued, except, etc.....	4410
Fictitious dividends, etc., void.....	4411
Penalty for violating two preceding articles.....	4412

Railroad stock is personal estate and transferable. (Act Aug. 15, 1876, p. 145, §17; p. 144, §10.)

Article 4394. [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. 4395. [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. 4396. [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. 4397. [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. 4398. [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.

Art. 4399. [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.

Extent of stockholder's liability for debts of corporation.
Ib. p. 146, §20.

Art. 4400. [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.

Persons holding stock who are not liable.
Ib. §19.

Art. 4401. [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. 4402. [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 postoffice directed to the postoffice 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. 4403. [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. 4404. [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. 4405. [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. 4406. [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. 4407. [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. 4408. [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, deter-

Stockholders may fix amount of loans and interest thereon.
Ib.

mine the amount of loans which may be negotiated by such company for the construction of its railway and its equipment, and fix the rate of interest which may be paid, and provide for the security of such loans.

Stockholders may remove officers and elect others. *Ib.*

Art. 4409. [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.

No stock shall be issued, except, etc. *Ib.* p. 148, §25. P. D. 4921.

Art. 4410. [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.

Fictitious dividends, etc., void. *Ib.*

Art. 4411. [4155] All fictitious dividends and other fictitious increase of the capital stock or indebtedness of any such corporation shall be void.

Penalty for violation of two preceding articles. P. D. 4921.

Art. 4412. [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.

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Annual meeting of stockholders.....4414	If quorum of stockholders should not meet4419
Directors and stockholders may meet at same time and place.....4415	Proxy must be dated, within what time..4420
Quorum of directors and stockholders....4416	What stock shall not vote.....4421
Special meeting of stockholders.....4417	

Annual meeting of directors. (Const., art. 10, §3.) (Acts of 1885, P. 67.)

Article 4413. [4157] The directors of every railroad company shall hold one meeting annually at their office in this state, public notice of which shall be given at least thirty days before said meeting, said notice to be published in some daily newspaper printed and published in this state.

Annual meeting of stockholders. (Act Aug. 15, 1876, p. 144, §12.)

Art. 4414. [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. 4415. [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. 4416. [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.

Art. 4417. [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.

Special meeting of stockholders.
Ib.

Art. 4418. [4162] When any 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.

Notice of special meeting.
Ib.

Art. 4419. [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 transaction of 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.

If quorum of stockholders should not meet.
Ib. p. 145, §14.

Art. 4420. [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. 4421. [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.

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Right to construct, etc., road anywhere in the state. (Const., art. 10, §1.)

Article 4422. [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 of way over public lands.

Art. 4423. [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.

Lineal survey. (Act Aug. 15, 1876, p. 147, §23.)

Art. 4424. [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.

May lay out road 200 feet in width, etc. lb.

Art. 4425. [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.

Right to construct across streams of water, etc.

Art. 4426. [4170] Such corporation shall have the right to construct its road 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.

Art. 4427. All railway corporations in this state which have, or which may hereafter fence their right of way, may be required to make openings or crossings through their fence and over their roadbed along their right of way every one and one-half miles thereof; provided, that if such fence shall divide any inclosure that at least one opening shall be made in said fence within such inclosure.

Opening through fences, etc. (Acts of 1887, p. 39.)

Art. 4428. Such crossings shall not be less than thirty feet in width, and shall be made and kept in such condition as to admit of the free and easy passage of horses, cattle, sheep, hogs and all other domesticated animals, wagons and other vehicles.

Width of crossings.

Art. 4429. Such crossings shall be made at such times and places as may be demanded by any two or more citizens of the state who either live or own land within five miles of the place where such crossings may be demanded.

Where may be made. Ib. §3.

Art. 4430. Such demand shall be made in writing, of the nearest local agent of such railway company to the place where such crossing or crossings are demanded, and shall state when and where such crossing is desired.

Demand to be in writing. Ib. §4.

Art. 4431. No railway company shall be required to complete such crossing as may be demanded under this chapter in a shorter time than thirty days from the day on which such demand is first made, nor shall they be required to make any crossings where they have already left such crossings in each one and one-half miles of their road, except inside of inclosures, as provided in article 4427.

Thirty days' time for completion. Ib. §5.

Art. 4432. Any railway company, upon such demand, shall be deemed to have complied therewith upon making such crossings within four hundred yards of the place where they are demanded, within the time herein allowed.

Distance from place. Ib. §6.

Art. 4433. Whenever any railway company shall fail or refuse to comply with the requirements of this chapter, after demand is made in accordance herewith, such railway company shall pay to the persons who made such demand each the sum of five hundred dollars for each and every month they shall so fail or refuse to comply with such demand, the same to be recovered by suit in any court of this state having jurisdiction of the amount.

Failure, etc. Ib. §7.

Art. 4434. Nothing in this chapter shall be so construed as to affect the law requiring railroad companies to provide proper crossings at intersection of all roads and streets.

Intersections of roads and streets. Ib. §8.

Art. 4435. It shall be the duty of every railroad company in this state to place and keep that portion of its roadbed and right of way, over or across which any public county road may run, in proper condition for the use of the traveling public, and in case of its failure to do so for thirty days after written notice given to the section boss of the section where such work or repairs are needed by the overseer of such public road, it shall be liable to a penalty of ten dollars for each and every week such railroad company may fail or neglect to comply with the requirements of this article, recoverable in any court having jurisdiction of the amount involved in a suit in the name of the county in which the cause of action accrued.

Crossings of public roads. (Acts of 1885, p. 45.)

Art. 4436. [4171] In no case shall any railroad company construct a roadbed without first constructing the necessary culverts or sluices, as the natural lay of the land requires, for the necessary drainage thereof.

Shall first construct necessary culverts, or sluices. (Acts of 1876, p. 147.)

Art. 4437. [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

Navigable waters shall not be obstructed. Ib.

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. 4438. [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. 4439. [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. 4440. [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. 4441. [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. 4442. [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. §22.

Art. 4443. [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. 4444. [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. 4445. [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. 4446. [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.

Statement to be filed with county judge. (Acts of 1885, p. 54.)

Art. 4447. [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 ob-

ject 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 or a part thereof is situated; provided, if the owner resides in either county in which a portion of the land is situated, the same shall be filed in the county of his residence.

Art. 4448. [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. (Acts of 1860, p. 60.)

Art. 4449. [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. 4450. [4185] Said commission 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. 4451. [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. 4452. [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 serving notice.

Art. 4453. [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. 4454. [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 belongs to estate or to a minor, notice shall be served on whom. *ib.*

Art. 4455. [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, or who secretes himself so that the process of law can not be served upon him, such notice may be served upon such owner by publication in the same manner as is provided for service of citation in article 1235 of the Revised Civil Statutes.

Property of non-resident, unknown owner, or one who secretes himself. (Acts of 1885, p. 54; amend. 1895, Sen. Jour., No. 83, p. 482.)

[Note.—Article 4456, by the report of the joint committee on amendments to the Revised Civil Code, No. 83, was merged into Article 4455 as it appears amended.]

Art. 4457. [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. 4458. [4192] Said commissioners for the purpose mentioned in this chapter shall have power to compel the attendance of

Power of commissioners.

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.

Rule of damages.

Art. 4459. [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 such railroad, and shall according to this rule assess the actual damage that will accrue to such owner by said condemnation.

Same subject.

Art. 4460. [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. 4461. [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. 4462. [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. 4463. [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. 4464. [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. 4465. [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. 4466. [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. 4467. [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.

Art. 4468. [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.

Art. 4469. [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.

Decision shall be made the judgment of the court, when.

Art. 4470. [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.

Costs shall be awarded, by what rule. 1b.

Art. 4471. [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.

Damages must be paid before property is taken. (Const., art. 1, §17.)

Art. 4472. When any railroad company is sued for any property occupied by it for railroad purposes or for damages thereto, the court in which such suit is pending may determine all matters in dispute between the parties, including the condemnation of the property, upon petition or cross-bill asking such remedy by defendant, but the plea for condemnation shall be an admission of the plaintiff's title to such property.

Practice in case specified. (Acts of 1889, p. 18.)

Art. 4473. [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.

The right of way, how construed. (Act Feb. 7, 1861, p. 12.)

Art. 4474. [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.

Right of way reserved out of lands granted to railroad companies. P. D. 7389a.

Art. 4475. [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.

Right of way vested by judgment of the court.

CHAPTER NINE.

OTHER RIGHTS OF RAILROAD CORPORATIONS.

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Shall have succession, etc. (Act Aug. 15, 1876, p. 142, §4.)

Article 4476. [4209] All railroad corporations shall have succession, and in their corporate name may sue and be sued, plead and be impleaded.

May have a seal. *Ib.*

Art. 4477. [4210] Any such corporation may have and use a seal, which it may alter at pleasure.

Shall have the right to purchase and hold lands and other property. *Ib.* p. 143, §§6, 23.

Art. 4478. [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.

Shall have the right to receive and hold grants, etc. *Ib.*

Art. 4479. [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.

Shall alienate lands, except, etc.; forfeiture. *Ib.*; amend. 1895, Sen. Jour., No. 84, p. 482.

Art. 4480. [4213, 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. 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 when lands have been received from the state.

Preceding articles to apply to all companies. *Ib.* p. 143, §6.

Art. 4481. [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.

Right to convey persons and property. *Ib.* p. 147, §23.

Art. 4482. [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. *Ib.*

Art. 4483. [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 employes or other persons, to construct any buildings along the line of their railroad to be oc-

cupied by their employes or others, except at their respective depot stations and section houses, and at such places only such building as may be necessary for the transaction of their legitimate business operations, and for shelter for their employes, 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.

Art. 4484. [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 regulate time, etc., of transportation.
Ib.

[Note.—Article 4485 (4218) omitted as repealed by the report of the joint committee on amendments to the Revised Civil Code, No. 85; Sen. Jour., 1895, p. 483.]

Art. 4486. [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.

Right to borrow money, issue bonds, etc.
Ib. p. 147, §23.

Art. 4487. [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 in a manner provided in this title for increasing the capital stock of such corporations.

Mortgage invalid, unless, etc.
Ib.

Art. 4488. [4221] When any such resolution has been adopted in the manner provided in 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.

Resolution authorizing mortgages shall be recorded.
Ib.

Art. 4489. [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.

Directors may pay bonds with stock.
Ib.

Art. 4490. Any railway company in the state of Texas having a terminus on the coast, the said terminus being a county site, and the same having been destroyed by storms and cyclones, and when said county site has been removed back from the coast near the line of said railway, it shall be lawful for said railway company to remove and take up its track from its original terminus on the coast to a point opposite or near said new county site; provided, said railway company make its terminus at and build its road to said new county site.

When terminus on coast is destroyed. (Acts of 1887, p. 6.)
Ib.

CHAPTER TEN.

RESTRICTIONS UPON, DUTIES AND LIABILITIES OF RAILROAD CORPORATIONS.

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Road shall pass through county seat, when, (Const., art. 10, §9.)

Article 4491. [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.

Shall survey 25 miles of road, locate depot, etc. (Act Aug. 15, 1876, p. 142, §5.)

Art. 4492. [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 roadbed is begun, and no railroad company shall change its route or depot grounds after the same have been so designated.

Subsequent survey of each 25 miles of road. Ib.

Art. 4493. [4225] Every railroad company organized under this title shall, on the completion of the first twenty-five miles of its roadbed, 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.

Trains to be regular, and notice to be given. P. D. 4893.

Art. 4494. [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.

[Note.—Article 4495 omitted as repealed by the report of the joint committee on amendments to the Revised Civil Code, No. 87; Sen. Jour., 1895, p. 483.]

Art. 4496. [4227] In case of the 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 appointed time, such corporation shall pay to the party aggrieved all damages which shall be sustained thereby, with costs of suit, and in case of the transportation of property shall in addition pay to such party special damages at the rate of five per cent per month upon the value of the same at the time of shipment, for the negligent detention thereof beyond the time reasonably necessary for its transportation; provided, that in all suits against such corporation under this law the burden of proof shall be on such corporations to show that the delay was not negligent.

Refusal to transport passenger or property. (Acts of 1887, p. 116.)

Art. 4497. When the owner, owners or managers of any freight of any kind shall make application in writing to the superintendent or person in charge of transportation, to any railway company operating a line at the point the cars are desired upon which to ship any freight, it shall be the duty of such railway company to supply the number of cars required at the point indicated in the application within a reasonable time, not to exceed six days from the receipt thereof, and shall furnish such cars to the persons applying therefor in the order applied for, without giving preference to any person.

Railroad to furnish cars when demanded. (Acts of 1887, p. 133.)

Art. 4498. Said application for cars shall state the number of cars desired, the place at which they are desired and the time they are desired; provided, that the place designated shall be at some station or switch on the railroad.

Application shall state, what. Ib. §2.

Art. 4499. When cars are applied for under the provisions of this chapter, if they are not furnished the railway company so failing to furnish them shall forfeit to the party or parties so applying for them the sum of twenty-five dollars per day for each car failed to be furnished, to be recovered in any court of competent jurisdiction, and all actual damages that such applicant may sustain.

Penalty for failure to furnish. Ib. §3.

Art. 4500. Such applicant shall at the time of applying for such car or cars deposit with the agent of such company one-fourth of the amount of the freight charge for the use of such cars unless the said road shall agree to deliver said cars without such deposit, and said applicant shall within forty-eight hours after such car or cars have been delivered and placed as hereinbefore provided, it shall be the duty of the applicant to fully load the same, and upon failure to do so he shall forfeit and pay to the company the sum of twenty-five dollars for each car not used. And if the said applicant shall not use such cars so ordered by him and shall so notify the said company or its agent, he shall forfeit and pay to the said railroad company in addition to the penalty herein prescribed the actual damages that such company may sustain by the said failure of the applicant to use said cars.

Applicant shall make deposit. Ib. §4.

Art. 4501. When cars have been supplied and loaded it shall be the duty of the railway company to deliver the same to the party or parties to whom they are consigned within a reasonable time, and the party or parties to whom the cars are consigned shall unload the same within forty-eight hours after delivery and notice, or forfeit to the railway company the sum of twenty-five dollars per day for each car so left unloaded, to be recovered in any court of competent jurisdiction.

To deliver loaded cars in reasonable time. Ib. §5.

Necessary for
applicant to
show, what.
Ib. §6.

Art. 4502. It shall be necessary for the party or parties bringing suit against any railroad company under the provisions of this law, to show by evidence that he or they had on hand at the time any demand for cars was made the amount of lumber, cotton, wool, hides or other freight necessary to load the cars so ordered; provided, that the provisions of this law shall not apply in cases of strikes or other public calamity.

Double-
decked cars
for sheep, etc.
(Acts of 1887,
p. 57, §1; Sen.
Jour., 1895, p.
483, No. 88.)

Art. 4502a. All railroad companies operating any railroad, or any part thereof, within the limits of this state, are required to provide cars with double decks for the shipment of sheep, goats, hogs and calves; that the said cars must be in every way as large as those now in use upon the respective railroads of this state; that the distance between the floor and the second deck shall be the same as the distance between said second deck and the roof; the floor of said second deck shall be so constructed as to protect the animals beneath; and said cars must be furnished by the railroad company to any person who shall offer to ship at one time hogs, sheep, goats, or calves, in carload lots.

Rates of
freight; pen-
alty.
Ib. §2.

Art. 4502b. It shall not be lawful for any railroad company to charge more for shipping a double-decked carload of sheep, goats, hogs, or calves than is charged for shipping a carload of other cattle or horses the same distance, and in the same direction, and any railroad company that shall fail or refuse to furnish double-decked cars of the dimensions prescribed in the preceding article, to any person who may wish to ship as much as a double-decked carload of sheep, hogs, goats, or calves, or shall charge more for shipping a double-decked carload of sheep, hogs, goats, or calves, than for shipping a carload of other cattle or horses for the same distance and in the same direction, shall be liable to pay to the owner or shipper of said sheep, hogs, goats, or calves, the sum of five hundred dollars as liquidated damages, to be recovered in any court of competent jurisdiction; provided, that if any railroad companies shall transport sheep, hogs, goats, and calves on single-decked cars at one-half the price per carload charged for shipping horses or other cattle, then the penalties prescribed in this article for failure to provide double-decked cars shall be inoperative.

Conductor,
etc., shall
wear badge.
P. D. 4891.

Art. 4503. [4228] Every conductor, baggage master, engineer, brakeman or other servant of 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 re-
ceive fare, etc.
Ib.

Art. 4504. [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. 4505. [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.

Art. 4506. [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 signs shall be liable in damages for all injuries occurring to persons or property from such neglect or refusal.

Signs shall be erected at cross-roads, etc.
P. D. 4890.

Art. 4507. [4232] A bell of at least thirty pounds weight and a steam whistle shall be placed on each locomotive engine, and the whistle shall be blown and the bell rung at the distance of at least eighty rods from the place where the railroad shall cross any public road or street, and such bell shall be kept ringing until it shall have crossed such public road, or stopped; and each locomotive engine approaching a place where two lines of railway cross each other, shall, before reaching such railway crossing, be brought to a full stop; and any engineer having charge of such engine, and neglecting to comply with any of the provisions of this article, shall be fined in any sum not less than five nor more than one hundred dollars for such neglect, and the corporation operating such railway shall be liable for all damages which shall be sustained by any person by reason of any such neglect; provided, however, that the full stop at such crossings may be discontinued when the railroads crossing each other shall put into full operation at such crossing an interlocking switch and signal apparatus, and shall keep a flagman in attendance at such crossing.

Bell and steam whistle; duty as to.
(Acts of 1883, p. 28; amend. 1893, p. 87.)

Art. 4508. [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.

Passenger trains, how formed.
P. D. 4896.

Art. 4509. Every railroad company, lessee, manager or receiver thereof, doing business in this state as common carriers of passengers for hire, shall provide separate coaches for the accommodation of white and negro passengers, which separate coaches shall be equal in all points of comfort and convenience.

Separate coaches.
(Acts of 1891, p. 44.)

Art. 4510. The term negro as used herein includes every person of African descent as defined by the statutes of this state.

"Negro" defined.
Ib. §2.

Art. 4511. Each compartment of a coach divided by a good and substantial wooden partition with a door therein shall be deemed a separate coach within the meaning of this law, and each separate coach shall bear in some conspicuous place appropriate words in plain letters indicating the race for which it is set apart.

Partition.
Ib. §3.

Art. 4512. Any railroad company, lessee, manager or receiver thereof which shall fail to provide its trains, carrying passengers, with separate coaches as above provided for, shall be liable for each and every such failure to a penalty not less than one hundred nor more than one thousand dollars, to be recovered by suit in the name of the state in any court of competent jurisdiction. And each trip run with any such train without such separate coaches shall be deemed a separate offense.

Penalty for failure.
Ib. §4.

Art. 4513. The provisions of this law shall not be so construed as to prohibit nurses from traveling in the same coach with employ-

Nurses not excluded.
Ib. §6, p. 165.

ers or employes upon the train in discharge of their duties; nor shall it be construed to apply to such freight trains as may carry passengers in cabooses, neither shall it apply to street railway cars; provided, that nothing herein contained shall be construed to prevent railroad companies in this state from hauling sleeping cars or chair cars attached to their trains to be used exclusively by either white or negro passengers separately but not jointly.

Law to be posted conspicuously.
Ib. §7.

Art. 4514. Every railroad company carrying passengers in this state shall keep this law posted in a conspicuous place in each passenger depot, and in each passenger coach, provided for in this chapter.

Not applied to excursion trains.
Ib. §8.

Art. 4515. The provisions of this chapter shall not apply to any excursion train run strictly as such for the benefit of either race.

Conductor authorized to refuse admittance to whom.
Ib. §9.

Art. 4516. Conductors of passenger trains provided with separate coaches shall have the authority to refuse any passenger admittance to any coach in which he is not entitled to ride under the provisions of this chapter; and the conductor in charge of the train shall have the authority, and it shall be his duty to remove from a coach any passenger not entitled to a ride therein under the provisions of this chapter. And upon his failure or refusal to do so he shall be punished as provided by the Penal Code.

Brakes and brakeman.
P. D. 4907.

Art. 4517. [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. 4518. [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 of 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 postoffice car; and in case the postmaster-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.

Station depots shall be erected, etc.
P. D. 4923.

Art. 4519. [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.

Art. 4520. [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. 4521. [4238] Every railroad company doing business in this state shall keep its depots or passenger houses in this state, lighted, and warmed, and open to the ingress and egress of all passengers who are entitled to go therein, for a time not less than one hour before the arrival and after the departure of all trains carrying passengers on such railroad, and every such railroad company for each failure or refusal to comply with the provisions of this article, shall forfeit and pay to the state of Texas, the sum of fifty dollars, which may be sued for and recovered in the name of the state in any court of competent jurisdiction, and shall be liable to the party injured for all damages by reason of such failure.

Passenger depots opened, lighted, warmed, etc.; penalty for failure. (Acts of 1891, p. 29; Sen. Jour., 1895, No. 89, p. 483.)

[Note.—The preceding article, by the report of the committee on amendments to the Revised Statutes, Senate Journal, page 483, is substituted for the original article (4238 of the revision of 1879) which by the same report is stricken out.]

Art. 4522. [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. 4523. [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. 4524. [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. 4525. [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. 4526. [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. 4925.

Art. 4527. [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.

Liability of company for neglect to place and keep in repair cattle-guards and stops. Ib.

Liability of
companies for
stock killed
or injured.
P. D. 4926.

Art. 4528. [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 want of ordinary care.

Consolidation
prevented.
(Acts of 1887,
p. 137.)

Art. 4529. It shall be unlawful for any railroad corporation or other corporation, or the lessees, purchasers or managers of any railroad corporation, to consolidate the stocks, property, works or franchises of such corporation with, or lease or purchase the stocks, property, works or franchises of any other railroad corporation owning or having under its control or management a competing or parallel line; nor shall any officer, agent, manager, lessee or purchaser of such railroad corporation act as or become an officer, agent, manager, lessee or purchaser of any other railroad corporation in leasing or purchasing any parallel or competing line.

Corporation
defined.
Ib. §3.

Art. 4530. Railroad corporation or other corporation, as used in the preceding article, is declared to mean any corporation, company, person or association of persons who own or control, manage or operate any line of railroad in this state.

Consolidation,
etc.

Art. 4531. [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 pro-
file of road,
etc., shall be
filed.
P. D. 4904.
(Acts 1893, p.
169.)

Art. 4532. [4248] Each railroad company transacting business in this state that has not heretofore filed a profile of its road in the general land office, in accordance with the provision of article 4248, shall file such profile in the office of the railroad commission; and each railroad company that shall construct any railroad in this state hereafter shall file in the office of said commission a profile of the road constructed. The profiles herein required to be filed in the office of the railroad commission, of roads already completed, shall be filed within three months after the passage of this law, unless in the judgment of the railroad commission the facts warrant the giving of a longer period of time, in which event said commission shall have power to extend the time at their discretion, not to exceed twelve months after the passage of this law.

2. The commissioner of the general land office shall, upon the taking effect of this law, file in the office of the railroad commission the original of all profiles of railroads heretofore filed in said office under article 4248 of the revised civil statutes.

3. Any railroad company failing or refusing to comply with the provisions of this act shall forfeit to the state of Texas any sum not less than five hundred dollars nor more than one thousand dollars, to be recovered in any court of competent jurisdiction in any county through which such railway company may pass; and each day such railroad company fails or refuses to comply with the provisions of this law shall be considered a separate offense.

[Note.—The foregoing article substitutes the original article of same number.]

[Note.—Article 4533 [4249], requiring railroad corporations to file an annual report with the comptroller, was repealed by the act of 1895, p. 85.]

Penalty for
neglect to
make report.
P. D. 4901.

Art. 4534. [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.

Art. 4535. [4251] All railway companies doing business in this state shall be and they are hereby required to receive from all other railway companies with which they may connect at the state line of this state, or at any place within this state, or at any or all places where they may cross the line of any other railway doing business or operating a line of railway in this state, all freights and passengers coming to it from such connecting line and destined to points on its line, or to points beyond its line or any other line of railway with which said line may connect or cross, and shall transport the same over its said line to destination, if on its line, or to the next connecting or cross line in the direction of destination, if beyond its line, without delay or discrimination in favor of or against the line from which such freight or passengers are received, and upon the same terms and conditions with those made by such line for like or similar service against any other railway in or out of this state with which it does business; provided, however, that the words "without delay or discrimination" as used herein are hereby declared to mean that the freight received for transportation as herein required shall be shipped in the order in which it is received, giving preference in all cases to live stock and other perishable freight in the order received, and the charges for the business required by this article to be interchanged shall be no greater pro rata per cent per mile for freight, and no greater rate per mile for passengers and baggage than is charged to any other line for transporting like freight and passengers and baggage, or that it accept for itself when transported wholly on its own line, no matter on what part of the line or in what direction the transporting is done.

To receive freights and passengers from connecting lines. (Acts of 1887, p. 110.)

Art. 4536. [4252] Whenever any two or more railroads doing business in this state shall connect with each other by crossing each other's tracks or otherwise so as to form a continuous or connected line from one point in the state to another point in this state, such lines so crossing are hereby declared to be connecting lines; and when such connecting lines receive from any other railway or transportation line passengers or freight for transportation over the combined line at a rate or division agreed upon between themselves and such other railway or transportation line from which the business is received as aforesaid, then in every such case it shall be the duty of such connecting railways forming such through line, and of either or both of them, to receive from every other railway or transportation line with which they or either of them may connect by crossing of track or otherwise, all passengers or freight that may be destined to points on either of the lines making up such combined line, and transport the same to the point of destination, if on such combined lines or either of them, or to the next connection or crossing in the direction of the destination of such freight or passengers, without delay or discrimination, and at no greater rate than is paid, and on the same conditions as is or shall be required by such combined line for like or similar services from any other railway or transportation line with which they or either of them shall interchange business.

What are connecting lines. Ib.

Art. 4537. [4253] Every railroad or person or corporation operating a railway for the carriage of freight and passengers in this state shall receive freight, passengers and baggage for transportation to or into this state, or through any part thereof, from every other connecting railway, upon the same terms and conditions as to the division of charges for carrying or transporting the same upon a mileage or any other basis, and upon terms and conditions as to bills

Terms for receiving, etc. Ib.

of lading, way-bills, tickets, coupon tickets and baggage checks, that any such person or corporation or transportation line may receive or contract to receive from any other person or corporation engaged in like business in this state; and where railroads within this state 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 the first forwarded, without giving the preference to one over another; and in case of failure to do so they shall be liable for all loss occurring while the goods remain, and for all damage occasioned or in any wise resulting from delay; provided, that the trip or voyage shall be considered as having commenced from the time of the signing of bill of lading, and as having ended upon the arrival of freight at point of destination, and written notices served upon the consignee that it is ready for delivery upon payment of freight and charges; provided further, that should the consignee of the goods fail to receive them promptly after such notice is served the liability of the railroads thereafter shall be the same as that of warehousemen.

(Acts of 1883,
p. 69.)

Declared to
be trustees,
etc.
Ib.

Art. 4538. [4254] Every railway which may interchange business with any other connecting railway under the provisions of this chapter or otherwise, is hereby declared to be a trustee for such connecting railway to the extent of all sums of money received by it for the joint business interchanged between them, and which may properly belong to such other railway. Such sums of money shall be due and payable from one connecting line to the other once every ninety days, and each connecting railway shall have a lien upon the property and franchises of connecting railways to the extent of balances due each quarter, which lien shall be superior to all other liens upon said property and franchises save and except laborers' liens, as already provided by law, and may be enforced in any of the courts of this state having jurisdiction by law of the subject matter and the parties.

Penalty for
refusing to re-
ceive from
connecting
lines.
(Acts of 1887,
p. 112.)

Art. 4539. [4255] If any railway company doing business in this state shall fail or refuse to interchange business with any other railway company, or shall fail or refuse to interchange business on the same terms or for the same pro rata that it interchanges business with any other railway company in this state; or shall fail or refuse to honor or receive the tickets, coupon tickets, waybills or baggage checks of any connecting railway upon the same terms and conditions that it receives or honors the tickets, coupon tickets, waybills or baggage checks of any other railway company; or shall violate in any manner any other provisions of this and the four preceding articles, such railway company so offending shall be deemed guilty of discrimination within the meaning of this title, and shall forfeit and pay to the person or corporation aggrieved thereby the sum of one thousand dollars as penal damages for each and every act of discrimination or violation of this law, which may be recovered in a civil action in any of the courts of this state having jurisdiction by law of such an amount, in the name of the person or corporation suing; provided, nothing in this article shall be so construed as to prevent the recovery of any other damages by and aggrieved person, firm or corporation, occurring by reason of the violation of this or the four preceding articles, nor to relieve any railway company or its officers, managers or agents, from prosecution for violation of any penal law of this state.

Equal facili-
ties to be
furnished.
(Acts of 1887,
p. 113.)

Art. 4540. Every railroad company operating a railroad within this state shall furnish reasonable and equal facilities and accom-

modations, and upon reasonable and equal rates, to all corporations and persons engaged in the express business, for the transportation of themselves, agents, servants, merchandise and other property, and for the use of their cars, depots, buildings and grounds, and for exchanges at points of junction with other roads.

Art. 4541. Any railroad company which shall fail to comply with the provisions hereof, shall be liable to the aggrieved party, in an action on the case, for damages, and such railway company, in addition to liability to said action for damages, shall be subject to a writ of mandamus, to be issued by any court of competent jurisdiction, to compel compliance with the provisions of the preceding article, and the said writ of mandamus shall issue at the instance of any party or corporation aggrieved by a violation hereof, and any violation of said writ shall be punishable as a contempt.

Damages for failure to comply, etc. Ib. §2.

Art. 4542. The passenger fare upon all railroads in this state shall be three cents per mile, with an allowance of baggage to each passenger not to exceed one hundred pounds in weight; provided, however, that where the fare is paid to the conductor, the rate shall be four cents per mile, except from stations where no tickets are sold, and that the minimum charge in no case shall be less than twenty-five cents; and provided further, that when the passenger fare does not end in five or naught, the nearest sum so ending shall be the fare; provided further, that in no case shall children under ten years of age be charged a higher rate of fare than two cents per mile; provided further, railroads shall be required to keep their ticket offices open half an hour prior to the departure of trains, and upon failure to do so they shall not charge more than three cents per mile.

Passenger fare three cents per mile. (Acts of 1883, p. 70, §9.)

CHAPTER ELEVEN.

COLLECTION OF DEBTS FROM RAILROAD CORPORATIONS.

Article	Article
Property of company subject to execution.....4543 Notice required in reducing wages.....4544 Time of notice and how given.....4545 Penalty, etc.....4546 When wages to be paid discharged employe.....4547 How claim under fifty dollars to be presented.....4548 Road liable to be sold for debt.....4549	New corporation in case of sale.....4550 Jurisdiction, etc.....4551 Sale under deed of trust, where made.....4552 Judgment, execution, etc.....4553 Unpaid stock, etc.....4554 After sale, old directors to be trustees.....4555 Suit not to abate, when.....4556 Not to apply to state loans.....4557

Article 4543. [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.

Property of company subject to execution. (Const., art. 10, §4.)

Art. 4544. All persons in the employment of such railway company shall be entitled to receive thirty days' notice from said company before their wages can be reduced by such company, and in all cases of reduction the employe shall be entitled to receive from such company wages at his contract price for the full term of thirty days after such notice is given, to be recovered in any court of competent jurisdiction.

Notice required in reducing wages. (Acts of 1887, p. 20.)

Art. 4545. The notice referred to in the preceding article is declared to mean thirty full days immediately prior to the day upon which such reduction is to take effect, and may be given by posting

Service of notice and how given. Ib. §2.

written or printed handbills, specifying the parties whose wages are to be reduced and the amount of such reduction, in at least three conspicuous places in or about each shop, section house, station, depot, train or other places where said employes are at work; provided, such employe shall, within fifteen days from the date of such notice, inform such railway company, by posting like notices as given by such railway company, whether he will or will not accept such reduction, and if no such information is given such company by such employe, then such employe shall forfeit his right to such notice, and such reduction shall take effect from the date of such notice, instead of at the expiration of thirty days.

Penalty.
Ib. §3.

Art. 4546. Any railway company violating or evading any of the provisions of the preceding article shall pay to each employe affected thereby one month's extra wages, to be recovered by such employe in any court of competent jurisdiction.

When wages
to be paid
discharged
employe.
(Acts of 1887,
p. 72.)

Art. 4547. Whenever any railroad company shall discharge any employe, or whenever the time of service of any employe of a railroad company shall expire, or whenever any railroad company shall be due and owing any employe, such railroad company, upon such discharge, or upon the termination of the term of such service, or upon the maturity of said indebtedness, shall, within fifteen days after demand therefor upon the nearest station agent of said railroad company, pay to such employe the full amount due and owing him; and in case said railroad company fails or refuses to pay such employe, then it shall be liable and pay to such employe twenty per cent on the amount due him, as damages, in addition to the amount so due, in no case the damages to be less than five nor more than one hundred dollars.

How claim
under \$50 to
be presented.
(Acts of 1889,
p. 131.)

Art. 4548. Any person in this state having a valid bona fide claim for personal services rendered or labor done, or for damages, or for overcharges on freight, or claims for stock killed or injured by the train of any railway company, provided that such claims for stock killed or injured shall be presented to the agent of the company nearest to the point where such stock was killed or injured, against any railway corporation operating a railroad in this state, and the amount of such claim does not exceed fifty dollars, may present the same, verified by his affidavit, for payment to such corporation by filing it with any station agent of such corporation in any county where suit may be instituted for the same, and if, at the expiration of thirty days after such presentation, such claim has not been paid or satisfied, he may immediately institute suit thereon in the proper court; and if he shall finally establish his claim, and obtain judgment for the full amount thereof, as presented for payment to such corporation in such court or any court to which the suit may have been appealed, he shall be entitled to recover the amount of such claim and all costs of suit, and in addition thereto all reasonable attorney fees, provided he has an attorney employed in the case, not to exceed ten dollars, to be assessed and awarded by the court or jury trying the issue. The provisions of this article shall be considered as cumulative of other remedies given to persons having claims against railway corporations.

Road, etc.,
liable to be
sold for debts.
P. D. 4912.

Art. 4549. [4260] In case of the sale of the entire roadbed, 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 fran-

chises 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 corporators 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. 4550. In case of any such sale heretofore or hereafter made of the roadbed, track, franchise or chartered right of a railway company or any part thereof as mentioned in article 4549, the purchaser or purchasers thereof and their associates shall be entitled to form a corporation under chapter one of this title, for the purpose of acquiring, owning, maintaining and operating the portion of the road so purchased as if such road or portion of the road were the road intended to be constructed by the corporation, and when such charter has been filed the said new corporation shall have all the powers and privileges conferred by the laws of this state upon chartered railroads, including the power to construct and extend; provided, that notwithstanding such incorporation the portion of the road so purchased shall be subject to the same liabilities, claims and demands in the hands of the new corporation as in the hands of the purchaser or purchasers of the sold out corporation; provided, that by such purchase and organization no rights shall be acquired under any former charter or law in conflict with the provisions of the present constitution in any respect, nor shall the main track of any railroad once constructed and operated be abandoned or removed.

New corporation, in case of sale, may be formed, how. (Acts of 1889, p. 19.)

Art. 4551. No railway company availing itself of any of the privileges herein provided shall claim to be under the jurisdiction of the federal courts by reason thereof, and any railway company which may avail itself of the said privileges which shall claim to be subject to the jurisdiction of the federal courts in pursuance of this article shall ipso facto forfeit its reorganization and be remanded to the same condition as it was prior to said reorganization.

Jurisdiction, etc. Ib. p. 20, §2.

Art. 4552. [4261] Whenever a sale of the roadbed, 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. 4553. [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 roadbed, 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 roadbed, 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 roadbed, track, franchise and chartered powers and privileges of any railroad company is directed to be made.

Judgment, execution, levy and sale. P. D. 4914.

Unpaid stock subscriptions of stockholders of sold out company. P. D. 4915.

Art. 4554. [4263] The sale of the roadbed, 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.

After sale old directors to be trustees. P. D. 4916.

Art. 4555. [4264] Whenever a sale of the roadbed, 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 other 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.

Suits not to abate. Ib.

Art. 4556. [4265] No suit pending for or against any railroad company at the time that the sale may be made of its roadbed, track, franchise and chartered privileges shall abate, but the same shall be continued in the name of the trustees of the sold out company.

This title not to apply to state loans, etc. P. D. 4917.

Art. 4557. [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 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.

FORFEITURE OF CHARTER.

Article	Article
Failure to build, when subject to forfeiture	Branch lines
4558	Neglect to make annual reports.....
	4559
	4560

Forfeiture for failure to build and equip. (Acts of 1889, p. 17.)

Article 4558. [4278] If any railroad corporation organized under this title shall not, within two years after its articles of association shall be filed and recorded as provided in 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, 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. The provisions of this article shall not apply to or in any manner affect railway companies incorporated for the construction and operation of urban, suburban and belt railroads for a distance of less than ten miles, as provided in clause two of article 4352, chapter one, of this title; provided, that all such companies shall, within twelve months from the date of their charter, complete a portion of their road and commence and continue the running of cars thereon.

Art. 4559. [4279] The preceding article shall apply as well to branch lines as to main lines of railroad.

Same as to branch lines. (Acts of 1876, p. 143, §7.)
Neglect to make annual report. P. D. 4902.

Art. 4560. [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.

CHAPTER TWELVE A.

HOW AND BY WHOM TICKETS MAY BE SOLD.

Article	Article
Authorized agent for sale of tickets...4560a	Company to provide for redemption of unused tickets, etc.; penalty.....4560d
Unlawful for another than agent to sell4560b	Company to print notice on ticket.....4560e
Duty of agents.....4560c	

Article 4560a. It shall be the duty of all railroad companies doing business in this state, or the receiver of any such railroad company, through their duly authorized officers, to provide each agent who may be authorized to sell tickets or other evidences entitling the holder to travel upon any such railroad, with a certificate setting forth the authority of such agent to make such sale. Such certificate shall be duly attested by the corporate seal of such railroad company, or the signature of the receiver, if any there be, of such railroad company, or by the signature of the officer whose name is signed upon the tickets or coupons which such agent may be authorized to sell.

Authorized agents for the sale of tickets. (Acts 1893, p. 97.)

Art. 4560b. It shall not be lawful for any person not possessed of such authority to sell, barter, or transfer, for any consideration whatever, the whole or any part of any ticket or tickets, passes, or other evidences of the holder's right to travel on any railroad within this state.

Unlawful for another than agent to sell, etc. Ib.

[Note.—For penalty see Penal Code.]

Art. 4560c. It shall be the duty of every agent, who shall be authorized to sell tickets or parts of tickets, or other evidences of the holder's right to travel over any railroad within this state, upon demand, to exhibit to any person desiring to purchase a ticket, or to any officer of the law who may request it, the certificate of his authority to sell, and to keep said certificate posted in a conspicuous place in his office for the information of travelers.

Duty of agent. Ib.

Duty of com-
pany to pro-
vide for re-
demption of
unused tick-
ets, etc.;
penalty.
Ib.

Art. 4560d. It shall be the duty of all railroad companies in this state, or the receiver or trustee of any such railroad company, to provide for the redemption, from the holder thereof, of the whole, or any parts or coupons, of any ticket or tickets which they or any of their duly authorized agents may have sold, if for any reason the holder has not used, and does not desire to use the same, upon the following terms: If neither the ticket nor any part thereof has been used by the holder, he shall be entitled to receive the full amount he paid therefor, and where the ticket has been used in part, the holder thereof shall be entitled to receive the remainder of the price paid for the whole ticket, after deducting therefrom the tariff rate between the points for which the portion of said ticket was actually used; provided, such tickets or parts thereof shall be presented for redemption to the railroad company from which it has been purchased, or the receiver of such railroad company, or to any of the duly authorized ticket agents of such railroad company, or receiver thereof, or in case of a through ticket, to any of the authorized agents of any connecting line, within a time not exceeding ten days after the right to use said ticket has expired by limitation of time as stipulated therein. Any person or persons who shall sell any unused ticket otherwise than by presentation of the same for redemption, as herein provided, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding five hundred dollars; provided, that the provisions of this chapter shall not apply to any person holding a ticket upon which is not plainly printed that it is a penal offense for him or her to sell, barter, or transfer said ticket for a consideration; and any railroad company, or receiver, or trustee of such railroad company, over or on which said ticket may be used, which shall refuse or fail to redeem the whole or any part or coupon of any ticket or tickets, when presented, shall forfeit to the holder thereof a sum not less than one hundred dollars, nor more than five hundred dollars, recoverable in any court of competent jurisdiction.

Duty of
company to
print notice
on ticket, etc.

Art. 4560e. It shall be the duty of the railway company to print conspicuously across the face of every ticket sold by its duly authorized agents in this state a notice to the holder thereof that it is a penal offense for him to sell, barter, or transfer said ticket for a consideration, and that this ticket or any unused part thereof is redeemable by the company or its receiver at any ticket office of the company, when presented for redemption.

CHAPTER TWELVE B.

FELLOW-SERVANTS.

	Article		Article
Who are vice-principals.....	4560f	Contracts that are void.....	4560h
Who are fellow-servants.....	4560g		

Who are vice-
principals.
(Acts of 1893,
p. 120.)

Article 4560f. All persons engaged in the service of any railway corporation, foreign or domestic, doing business in this state, or in the service of a receiver, manager, or of any person controlling or operating such corporation, who are entrusted by such corporation, receiver, or person in control thereof, with the authority of superintendence, control, or command of other persons in the employment of such corporation, or receiver, manager, or person in control of

such corporation, or with the authority to direct any other employe in the performance of the duty of such employe, are vice principals of such corporation, receiver, manager, or person controlling the same, and are not fellow servants of such employe.

Art. 4560g. All persons who are engaged in the common service of such railway corporation, receiver, manager, or person in control thereof, and who, while so employed, are in the same grade of employment and are working together at the same time and place, and to a common purpose, neither of such persons being entrusted by such corporation, receiver, manager, or person in control thereof, with any superintendence or control over their fellow employes, or with the authority to direct any other employe in the performance of any duty of such employe, are fellow servants with each other; provided, that nothing herein contained shall be so construed as to make employes of such corporation, receiver, manager, or person in control thereof, fellow servants with other employes engaged in any other department or service of such corporation, receiver, manager, or person in control thereof. Employes who do not come within the provisions of this chapter shall not be considered fellow servants.

Who are fellow-servants.
1b.

Art. 4560h. No contract made between the employer and employe, based upon the contingency of death or injury of the employe, limiting the liability of the employer under this chapter, or fixing damages to be recovered, shall be valid and binding.

Contracts that are void.
1b.

CHAPTER THIRTEEN.

RAILROAD COMMISSION OF TEXAS.

Article	Article
Railroad commission created.....4561	Power to issue subpoenas.....4572
Powers and duties, etc.....4562	Penalty for extorting, etc.....4573
Notice to be given when rates fixed.....4563	"Unjust discrimination" defined.....4574
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To be furnished with schedules of rates fixed.....4567	Certified evidence.....4578
Complainant may apply to commission, when.....4568	All violations of duty to be reported.....4579
May inspect books, etc.....4569	"Railroad," etc., defined.....4580
To ascertain cost of railways, etc.....4570	Law cumulative, etc.....4581
Blanks for information to be prepared.....4571	Duties as to express companies.....4582
	Guilt of extortion, when, etc.....4583
	To make investigations, etc.....4584

Article 4561. A railroad commission is hereby created, to be composed of three persons to be appointed by the governor, as follows: If the legislature be in session the governor shall, by and with the advice of the senate, appoint said commissioners, but if the legislature be not in session, the governor shall make such appointments, and each commissioner so appointed shall hold his office until the second Monday after the inauguration of the next succeeding governor and until his successor is appointed and qualified. Each succeeding governor shall on the second Monday after his inauguration, or as soon thereafter as practicable, appoint said commissioners, who shall each hold his office until the second Monday after the inauguration of the next succeeding governor and until his successor is appointed and qualified.

Railroad commission created, how. (Acts of 1891, p. 55.)

1. The persons so appointed shall be resident citizens of this state, and qualified voters under the constitution and laws, and not less than twenty-five years of age. No person shall be appointed as such commissioner who is directly or indirectly interested in any

Qualifications of commissioners.

railroad in this state or out of it, or in any stock, bond, mortgage, security, or in the earnings of any such road; and if such commissioner shall voluntarily become so interested his office shall become vacant; and if any railroad commissioner shall become so interested otherwise than voluntarily, he shall within a reasonable time divest himself of such interest; failing to do this, his office shall become vacant.

Shall hold no other office, etc.

2. No commissioner hereunder shall hold any other office under the government of the United States or of this state or of any other state government; and shall not while such commissioner engage in any occupation or business inconsistent with his duties as such commissioner.

Vacancies.

3. The governor shall fill all vacancies in the office of commissioner by appointment, and the person so appointed shall fill out the unexpired term of his predecessor.

Oath, etc.

4. Before entering upon the duties of his office, each of said commissioners shall take and subscribe to the oath of office prescribed in the constitution, and shall, in addition thereto, swear that he is not directly or indirectly interested in any railroad, nor in the bonds, stock, mortgages, securities, contracts or earnings of any railroad, and that he will to the best of his ability faithfully and justly execute and enforce the provisions of this chapter and all laws of this state concerning railroads, which oath shall be filed with the secretary of state.

Salary.

5. Each of said commissioners shall receive an annual salary of four thousand dollars, payable in the same manner that salaries of other state officers are paid.

Sessions; may appoint clerks, etc.; their salaries.

The commissioners appointed shall meet at Austin and organize and elect one of their number chairman of said commission. A majority of said commissioners shall constitute a quorum to transact business. Said commission may appoint a secretary at a salary of not more than two thousand dollars per annum, and may appoint not more than two clerks at a salary of not more than fifteen hundred dollars per annum each, and such other persons as experts as may be necessary to perform any duty that may be required of them by this chapter. The secretary shall keep full and correct minutes of all the transactions and proceedings of said commission, and perform such duties as may be required by the commission. The commission shall have power to make all needful rules for their government and for their proceedings. They shall be known collectively as "Railroad Commission of Texas," and shall have a seal, a star of five points, with the words "Railroad Commission of Texas" engraved thereon. They shall be furnished with an office in the capitol at Austin, and with necessary furniture, stationery, supplies, and all necessary expenses, to be paid for on the order of the governor.

Expenses.

The commissioners, secretary and clerks shall be entitled to receive from the state their actual necessary traveling expenses, which shall include the cost only of transportation while traveling on the business of the commission, to be paid out on the order of the governor upon an itemized statement thereof, sworn to by the party who incurred the expense, and approved by the commission.

May hold sessions at any place, etc.

Said commissioners may hold sessions at any place in this state when deemed necessary to facilitate the discharge of their duties.

Powers and duties.

Art. 4562. The power and authority is hereby vested in the railroad commission of Texas, and it is hereby made its duty, to adopt

all necessary rates, charges and regulations to govern and regulate railroad freight and passenger tariffs, the power to correct abuses and prevent unjust discrimination and extortion in rates of freight and passenger tariffs on the different railroads in this state, and to enforce the same by having the penalties inflicted as by this chapter prescribed through proper courts having jurisdiction.

1. The said commission shall have power, and it shall be its duty, to fairly and justly classify and subdivide all freight and property of whatsoever character that may be transported over the railroads of this state into such general and special classes or subdivisions as may be found necessary and expedient. To classify freights.

2. The commission shall have power, and it shall be its duty, to fix to each class or subdivision of freight a reasonable rate for each railroad subject to this chapter for the transportation of each of said classes and subdivisions. To fix reasonable rates.

3. The classifications herein provided for shall apply to and be the same for all railroads subject to the provisions of this chapter. Classifications to be uniform.

4. The said commission may fix different rates for different railroads and for different lines under the same management, or for different parts of the same lines if found necessary to do justice, and may make rates for express companies different from the rates fixed for railroads. May fix different rates.

5. The said commission shall have power, and it shall be its duty, to fix and establish for all or any connecting lines of railroad in this state reasonable joint rates of freight charges for the various classes of freight and cars that may pass over two or more lines of such railroads. Rates for connecting lines.

6. If any two or more connecting railroads shall fail to agree upon a fair and just division of the charges arising from the transportation of freights, passengers or cars over their lines, the commission shall fix the pro rata part of such charges to be received by each of said connecting lines. Commission to fix when there is disagreement.

7. Until the commission shall make the classifications and schedules of rates as herein provided for, and afterwards if they deem it advisable, they may make partial or special classifications for all or any of the railroads subject hereto, and fix the rates to be charged by such roads therefor; and such classifications and rates shall be put into effect in the manner provided for general classifications and schedules of rates. Old rates to exist until changed by the commission.

8. The commission shall have power and it shall be its duty from time to time, to alter, change, amend or abolish any classification or rate established by it when deemed necessary; and such amended, altered or new classifications or rates shall be put into effect in the same manner as the originals. May alter, abolish, etc.

9. The commission may adopt and enforce such rules, regulations and modes of procedure as it may deem proper to hear and determine complaints that may be made against the classifications or the rates, the rules, regulations and determinations of the commission. May adopt rules and regulations.

10. The commission shall make reasonable and just rates of charges for each railroad subject hereto for the use or transportation of loaded or empty cars on its road; and may establish for each railroad or for all railroads alike reasonable rates for the storing and handling of freight and for the use of cars not unloaded after forty-eight hours' notice to the consignee, not to include Sundays. Empty cars.

11. The commission shall make and establish reasonable rates for the transportation of passengers over each or all of the railroads May fix rates for all services.

subject hereto, which rates shall not exceed the rates fixed by law. The commission shall have power to prescribe reasonable rates, tolls or charges for all other services performed by any railroad subject hereto.

Railways to maintain depots, etc.

12. It shall be the duty of each and every railway subject to this chapter to provide and maintain adequate, comfortable and clean depots and depot buildings at its several stations for the accommodation of passengers, and said depot buildings shall be kept well lighted and warmed for the comfort and accommodation of the traveling public; and all such roads shall keep and maintain adequate and suitable freight depots and buildings for the receiving, handling, storing and delivering of all freights handled by such roads; provided, that this shall not be construed as repealing any existing laws on the subject.

Notice to be given when rates fixed.

Art. 4563. Before any rates shall be established under this chapter, the commission shall give the railroad company to be affected thereby ten days' notice of the time and place when and where the rates shall be fixed; and said railroad company shall be entitled to be heard at such time and place, to the end that justice may be done; and it shall have process to enforce the attendance of its witnesses. All process herein provided for shall be served as in civil cases.

May fix rules for all investigations.

1. The commission shall have power to adopt rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings of railroad companies and other parties before it, in the establishment of rates, orders, charges and other acts required of it under this law; provided, no person desiring to be present at any such investigation by said commission shall be denied admission.

May administer oaths, etc.

2. The chairman and each of the commissioners, for the purposes mentioned in this chapter, shall have power to administer all oaths, certify to all official acts, and to compel the attendance of witnesses and the production of papers, waybills, books, accounts, documents and testimony, and to punish for contempt as fully as is provided by law for the district or county court.

Rates to be held conclusive until, etc.

Art. 4564. In all actions between private parties and railway companies brought under this law, the rates, charges, orders, rules, regulations and classifications prescribed by said commission before the institution of such action shall be held conclusive, and deemed and accepted to be reasonable, fair and just, and in such respects shall not be controverted therein until finally found otherwise in a direct action brought for that purpose in the manner prescribed by articles 4565 and 4566 of this chapter.

When railway dissatisfied, may file petition, etc.

Art. 4565. If any railroad company or other party at interest be dissatisfied with the decision of any rate, classification, rule, charge, order, act or regulation adopted by the commission, such dissatisfied company or party may file a petition setting forth the particular cause or causes of objection to such decision, act, rate, rule, charge, classification or order, or to either or all of them, in a court of competent jurisdiction in Travis county, Texas, against said commission as defendant. Said action shall have precedence over all other causes on the docket of a different nature, and shall be tried and determined as other civil causes in said court. Either party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court, at either of its terms, and said action so appealed shall have precedence in said appellate court of all causes of a different character therein pending; provided, that if the court be in session at the time such

right of action accrues, the suit may be filed during such term and stand ready for trial after ten days' notice.

Art. 4566. In all trials under the foregoing article the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence that the rates, regulations, orders, classifications, acts or charges complained of are unreasonable and unjust to it or them. Burden of proof.

Art. 4567. The said commission shall, as soon as the classifications and schedules of rates herein provided for are prepared by them, furnish each railroad subject to the provisions of this chapter with a complete schedule in suitable form, showing the classification of freight made by them and the rates fixed by said commission to be charged by such road for the transportation of each class of freight, and shall cause a certified copy of such classification and schedule of rates to be delivered to each of said railroads at its principal office in this state, if it has such office in this state, and if not, then to any agent of said company in this state, which said schedule, rules and regulations shall take effect at the date which may be fixed by said commission, not less than twenty days. Each of said railroad companies shall cause said schedule to be printed in type of a size not less than pica, and shall have the same posted up in a conspicuous place at each of its depots, so as to be inspected by the public. Said commission may at any time abolish, alter or in any manner amend the said schedules, or abolish or amend any such regulations, and in that event certified copies of the schedules, rules or regulations, showing the changes therein, shall be delivered to each road as herein specified. In all cases where the rates shall not have been fixed by the commission, no changes shall be made except after ten days' notice to and consent of the commission. Railroads to be furnished with schedule of rates fixed.

Art. 4568. Any person, firm, corporation or association, or any mercantile, agricultural or manufacturing association, or any body politic or municipal organization complaining of anything done or omitted to be done by any railroad subject hereto, in violation of any law of this state or the provisions of this chapter for which penalty is provided, may apply to said commission in such manner and under such rules as the commission may prescribe; whereupon, if there shall appear to the commission to be any reasonable grounds for investigating such complaint, it shall give at least five days' notice to such railroad of such charge and complaint, and call upon said road to answer the same at a time and place to be specified by the commission. The commission shall investigate and determine such complaint under such rules and modes of procedure as it may adopt. If the commission finds that there has been a violation, it shall determine if the same was willful; if it finds that such violation was not willful, it may call upon said road to satisfy the damage done to the complainant thereby, stating the amount of such damage, and to pay the cost of such investigation; and if the said railroad shall do so within the time specified by the commission there shall be no prosecution by the state; but if said railroad shall not pay said damage and cost within the time specified by said commission, or if the commission finds such violation to be willful, it shall institute proceedings to recover the penalty for such violation and the cost of such investigation. All such complaints shall be made in the name of the state of Texas upon the relation of such complainant. All evidence taken before said commission in the investigation of any such complaint, when reduced to writing and signed and sworn to by the wit- Complainants may apply to commission. Proceedings thereunder.

ness, may be used by either party—the state, complainant or the railroad company—in any proceeding against such railroad involving the same subject matter; provided further, that the commissioners may require the testimony so taken before them to be reduced to writing when they may deem it necessary, or when requested to do so by either party to such proceedings, and a certified copy, under the hand and seal of said commission, shall be admissible in evidence upon the trial of any cause or proceeding growing out of the same transaction against such railroad, involving the same subject matter and between the same parties. The provisions of this article shall not abridge nor affect the rights of any person to sue for any penalty that may be due him under the provisions of this chapter or any other law of this state.

May inspect
books, etc.
Ib. §10.

Art. 4569. The commissioners, or either of them, or such persons as they employ therefor, shall have the right, at such times as they may deem necessary, to inspect the books and papers of any railroad company and to examine under oath any officer, agent or employe of such railroad in relation to the business and affairs of the same. If any railroad shall refuse to permit the commissioners, or either of them, or any person authorized thereto, to examine its books and papers, such railroad company shall for each offense pay to the state of Texas not less than one hundred and twenty-five dollars nor more than five hundred dollars for each day it shall so fail or refuse; provided, that any person other than one of said commissioners who shall make any such demands shall produce his authority, under the hand and seal of said commission, to make such inspection.

To ascertain
cost of rail-
way, etc.
Ib. §11.

Art. 4570. The commission shall ascertain as early as practicable the amount of money expended in construction and equipment per mile of every railway in Texas; the amount of money expended to procure the right of way, and the amount of money it would require to reconstruct the roadbed, track, depots and transportation, and to replace all the physical properties belonging to the railroad. It shall also ascertain the outstanding bonds, debentures and indebtedness and the amount respectively thereof, when issued, and rate of interest, when due, for what purpose issued, how used, to whom issued, to whom sold, and the price in cash, property or labor, if any, received therefor, what became of the proceeds, by whom the indebtedness is held, the amount purporting to be due thereon, the floating indebtedness of the company, to whom due and his address, the credits due on it, the property on hand belonging to the railroad company, and the judicial or other sales of said road, its property or franchises, and the amounts purporting to have been paid and in what manner paid therefor. The commission shall also ascertain the amounts paid for salaries to the officers of the railroad and the wages paid its employes. For the purpose in this article named, the commission may employ sworn experts to inspect and assist them when needed, and from time to time, as the information required by this article is obtained, it shall communicate the same to the attorney general by report, and file a duplicate thereof with the comptroller for public use, and said information shall be printed from time to time in the annual report of the commission.

Blanks for in-
formation to
be prepared.
Ib. §12.

Art. 4571. The said commission shall cause to be prepared suitable blanks with questions calculated to elicit all information concerning railroads, and as often as it may be necessary furnish said blanks to each railroad company. Any railroad company receiving from the commission any such blanks shall cause said blanks to be

properly filled out so as to answer fully and correctly each question therein propounded, and in case they are unable to answer any question, they shall give a satisfactory reason for their failure; and the said answers, duly sworn to by the proper officer of said company, shall be returned to said commission at its office in the city of Austin within thirty days from the receipt thereof.

1. If any officer or employe of a railroad company shall fail or refuse to fill out and return any blanks as above required, or fail or refuse to answer any questions therein propounded, or give a false answer to any such question, where the fact inquired of is within his knowledge, or shall evade the answer to any such questions, such person shall be guilty of a misdemeanor and shall, on conviction thereof, be fined for each day he shall fail to perform such duty after the expiration of the time aforesaid a penalty of five hundred dollars, and the commission shall cause a prosecution therefor in the proper court; and a penalty of a like amount shall be recovered from the company when it appears that such person acted in obedience to its direction, permission or request in his failure, evasion or refusal. Said commission shall have the power to prescribe a system of bookkeeping to be observed by all the railroads subject hereto, under the penalties prescribed in this article.

Penalty for failure to fill out blanks.

Commission to adopt system of book-keeping.

2. The said commission shall make and submit to the governor annual reports containing a full and complete account of the transactions of their office, together with the information gathered by such commission as herein required, and such other facts, suggestions and recommendations as may be by them deemed necessary, which report shall be published as the reports of the heads of departments.

Annual reports.

3. The said commission shall have power, and it is hereby made its duty, to investigate all through freight rates on railroads in Texas; and when the same are, in the opinion of the commission, excessive or levied or laid in violation of the interstate commerce law, or the rules and regulations of the interstate commerce commission, the officials of the railroads are to be notified of the facts and requested to reduce them or make the proper corrections, as the case may be. When the rates are not changed or the proper corrections are not made according to the request of the commission the latter is instructed to notify the interstate commerce commission and to apply to it for relief.

Duty as to through freights.

Art. 4572. The said commission, in making any examination or investigation provided in this chapter, shall have power to issue subpoenas for the attendance of witnesses by such rules as they may prescribe. Each witness who shall appear before the commission by order of the commission, at a place outside of the county of his residence, shall receive for his attendance one dollar per day and three cents per mile, traveled by the nearest practicable route, in going to and returning from the place of meeting of said commission, which shall be ordered paid by the comptroller of public accounts upon the presentation of proper vouchers, sworn to by such witness, and approved by the chairman of the commission; provided, that no witness shall be entitled to any witness fees or mileage who is directly or indirectly interested in any railroad in this state or out of it, or who is in any wise interested in any stock, bond, mortgage, security or earnings of any such road, or who shall be the agent or employe of such road, or an officer thereof, when summoned at the instance of such railroad; and no witness furnished with free trans-

Power to issue subpoenas. lb. §13.

Pay of witnesses.

Proceedings
to compel
attendance
of witnesses.

portation shall receive pay for the distance he may have traveled on such free transportation. In case any witness shall fail or refuse to obey such subpoena, said commission may issue an attachment for said witness, directed to any sheriff or any constable of the state of Texas, and compel him to attend before the commission and give his testimony upon such matter as shall be lawfully required by them. If a witness, after being duly summoned, shall fail or refuse to attend or to answer any question propounded to him, and which he would be required to answer if in court, the commission shall have the power to fine and imprison such witness for contempt, in the same manner that a judge of the district court might do under similar circumstances. The claim that any such testimony may tend to criminate the person giving it shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding; provided, the commission shall in all cases have the right in its discretion to issue proper process and take depositions instead of compelling personal attendance of witnesses. The sheriff or constable executing any process issued under the provisions of this article or under any other provisions of this chapter shall receive such compensation as may be allowed by the commission, not to exceed fees as now prescribed by law for similar services.

Penalty for
extorting.
Ib. §14.

Art. 4573. If any railroad company, subject to this chapter, or its agent or officer, shall hereafter charge, collect, demand or receive from any person, company, firm or corporation a greater rate, charge or compensation than that fixed and established by the railroad commission for the transportation of freight, passengers or cars, or for the use of any car on the line of its railroad, or any line operated by it, or for receiving, forwarding, handling or storing any such freight or cars, or for any other service performed or to be performed by it, such railroad company and its said agent and officer shall be deemed guilty of extortion, and shall forfeit and pay to the state of Texas a sum not less than one hundred dollars nor more than five thousand dollars.

"Unjust discrimination"
defined.
Ib. §15.

Art. 4574. If any railroad subject hereto, directly or indirectly, or by any special rate, rebate, drawback or other device, shall charge, demand, collect or receive from any person, firm or corporation a greater or less compensation for any service rendered or to be rendered by it than it charges, demands, collects or receives from any other person, firm or corporation for doing a like and contemporaneous service, such railroad shall be deemed guilty of unjust discrimination, which is hereby prohibited.

Same.

1. It shall also be an unjust discrimination for any such railroad to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or to subject any particular description of traffic to any undue or unreasonable prejudice, delay or disadvantage in any respect whatsoever.

Same.

2. Every railroad company which shall fail or refuse, under such regulations as may be prescribed by the commission, to receive and transport without delay or discrimination the passengers, tonnage and cars, loaded or empty, of any connecting line of railroad, and every railroad which shall, under such regulations as may be prescribed by the commission, fail or refuse to transport and deliver without delay or discrimination any passengers, tonnage or cars, loaded or empty, destined to any point on or over the line of any

connecting line of railroad, shall be deemed guilty of unjust discrimination; provided, perishable freights of all kinds and live stock shall have precedence of shipment.

3. It shall also be an unjust discrimination for any railroad sub- Same. ject hereto to charge or receive any greater compensation in the aggregate for the transportation of like kind of property or passengers for the shorter than for a longer distance over the same line; provided, that upon application to the commission any railroad may in special cases, to prevent manifest injury, be authorized by the commission to charge less for longer than for shorter distances for transporting persons and property, and the commission shall from time to time prescribe the extent to which such designated railroad may be relieved from the operations of this provision; provided, that no manifest injustice shall be imposed upon any citizen at intermediate points; provided further, that nothing herein shall be so construed as to prevent the commission from making what are known as "group rates" on any line or lines of railroad in this state.

4. Any railroad company violating any provision of this article shall be deemed guilty of unjust discrimination, and shall for each offense pay to the state of Texas a penalty of not less than five hundred dollars nor more than five thousand dollars. Penalty for unjust discrimination.

5. Nothing herein shall prevent the carriage, storage or handling Same. of freight free or at reduced rates for the state, or for any city, county or town government, or for charitable purposes, or to and from fairs and expositions for exhibition thereof, or the free carriage of destitute and indigent persons, or the issuance of mileage or excursion passenger tickets; nor to prevent railroads from giving free transportation to ministers of religion, or free transportation to the inmates of hospitals, eleemosynary and charitable institutions, and to the employes of the agricultural and geological departments of this state, or to peace officers of this state; and nothing herein shall be construed to prevent railroads from giving free transportation to any railroad officers, agents, employes, attorneys, stockholders or directors, or to the railroad commissioners, their secretary, clerks and employes herein provided for, or to any person not prohibited by law; provided, they, or either of them, shall not receive from the state mileage when such pass is used.

Art. 4575. In case any railroad subject to this chapter shall do, Same. cause to be done, or permit to be done any matter, act or thing in this chapter prohibited or declared to be unlawful, or shall omit to do any act, matter or thing herein required to be done by it, such railroad shall be liable to the person or persons, firm or corporation injured thereby for the damages sustained in consequence of such violation; and in case said railroad company shall be guilty of extortion or discrimination as by this chapter defined, then, in addition to such damages, such railroad shall pay to the person, firm or corporation injured thereby a penalty of not less than one hundred and twenty-five dollars nor more than five hundred dollars, to be recovered in any court of competent jurisdiction in any county into or through which such railroad may run; provided, that such road may plead and prove as a defense to the action for said penalty that such overcharge was unintentionally and innocently made through a mistake of fact; provided, that any such recovery as herein provided shall in no manner affect a recovery by the state of a penalty provided for such violation. Ib. §17.

Same.
Ib. §18.

Art. 4576. If any railroad, as aforesaid, shall willfully violate any other provision of this chapter, or shall do any other act herein prohibited, or shall fail or refuse to perform any other duty enjoined upon it for which a penalty has not herein been provided, for every such act of violation it shall pay the state of Texas a penalty of not more than five thousand dollars.

Venue of suits for recovery of penalty.
Ib. §19.

Art. 4577. All of the penalties herein provided, except as provided in article 4575, shall be recovered and suits thereon shall be brought in the name of the state of Texas in the proper court having jurisdiction thereof in Travis county, or in any county to or through which such railroad may run, by the attorney general or under his direction; and the attorney bringing such suit shall receive a fee of fifty dollars for each penalty recovered and collected by him, and ten per cent of the amount collected, to be paid by the state. In all suits arising under this chapter the rules of evidence shall be the same as in ordinary civil actions, except as otherwise herein provided. All fines and penalties recovered by the state under this chapter shall be paid into the treasury of the state.

Certified copies of commission rates to be evidence.
Ib. §20.

Art. 4578. Upon application of any person the commission shall furnish certified copies of any classification, rates, rules, regulations or orders, and such certified copies, or printed copies published by authority of the commission, shall be admissible in evidence in any suit and sufficient to establish the fact that any charge, rate, rule, order or classification therein contained and which may be in issue in the trial, is the official act of the commission. A substantial compliance with the requirements of this chapter shall be sufficient to give effect to all the classifications, rates, charges, rules, regulations, requirements and orders made and established by the commission, and none of them shall be declared inoperative for any omission of a technical matter in the performance of such act.

Effect given to classifications, when.

All violations of duty to be reported to attorney-general.
Ib. §21.

Art. 4579. It is hereby made the duty of such railroad commission to see that the provisions of this chapter and all laws of this state concerning railroads are enforced and obeyed, and that violations thereof are promptly prosecuted, and penalties due the state therefor recovered and collected. And said commission shall report all such violations, with the facts in their possession, to the attorney general or other officer charged with the enforcement of the laws, and request him to institute the proper proceedings; and all suits between the state and any railroad shall have precedence in all courts over all other suits pending therein.

Duty to investigate all charges and see that the law is enforced.

1. It shall be the duty of the commission to investigate all complaints against railroad companies subject hereto, and to enforce all laws of this state in reference to railroads. But any two connecting railroads may enter into a contract whereby any part or all of the passengers, freight or cars, empty or loaded, hauled or transported by one and destined to points on or beyond the line of the other, shall be delivered to, received and transported by the other; which contract, however, shall be submitted to the railroad commission for examination and approval, and when so approved shall be binding; but if the said contract be not approved by the commission the same shall be void; provided, that any connecting line delivering freight to the owner or consignee of such freight may be sued by the owner thereof in the county where the freight is delivered for any damage that may be done to such freight in its transportation.

"Road," "railroad," "railroad" companies, etc., defined.
§22.

Art. 4580. The terms "road," "railroad," "railroad companies" and "railroad corporations," as used herein, shall be taken to mean

and embrace all corporations, companies, individuals and associations of individuals, their lessees or receivers (appointed by any court whatsoever) that may now or hereafter own, operate, manage or control any railroad or part of a railroad in this state, and all such corporations, companies and associations of individuals, their lessees or receivers, as shall do the business of common carriers on any railroad in this state.

1. The provisions of this chapter shall be construed to apply to and affect only the transportation of passengers, freight and cars between points within this state; and this chapter shall not apply to street railways nor suburban or belt lines of railways in or near cities and towns.

Law applies only to railroads in this state.

2. It shall be the duty of the commission to see that, upon every railroad and branch of same carrying passengers for hire in this state, shall run at least one train a day (Sundays excepted) upon which passengers shall be hauled, and the commission shall have no power to relax this provision.

One train a day to be run.

Art. 4581. This law shall not have the effect to release or waive any right of action by the state or any person for any right, penalty or forfeiture which may have arisen or may hereafter arise under any law of this state; and all penalties accruing under this chapter shall be cumulative of each other, and a suit for or recovery of one shall not be a bar to the recovery of any other penalty; and all laws and parts of laws in conflict with this chapter are repealed.

Law cumulative. §23.

DUTIES AND POWERS AS TO EXPRESS COMPANIES.

Art. 4582. The railroad commission of the state of Texas shall have power, and it shall be its duty, to fix and establish reasonable and just rates of charges for each class or kind of property, money, papers, packages and other things to be charged for and received by each express company on all such property, money, papers, packages and things which by the contract of carriage are to be transported by such express company, between points wholly within this state, which rates or charges may be made to apply to all such companies, and may be changed or modified by said commission from time to time in such manner as may become necessary. Said commission shall have the same power to make and prescribe such rules and regulations for the government and control of such express companies as is or may be conferred upon said commission for the regulation of railroads.

Duties and powers as to express companies. (Acts of 1891, p. 48, §2.)

Art. 4583. Every express company doing business in this state which shall demand or receive a greater compensation than that which may be prescribed and fixed by the said railroad commission for the transportation of any class or kind of property, money, papers, packages or things, shall be deemed guilty of extortion, and shall forfeit and pay to the state of Texas a sum not to exceed five hundred dollars for each offense; provided, that if it shall appear that such violation was not willful, said company shall have ten days to refund such overcharges or damages, in which case the penalty shall not be incurred. And the said commission shall have authority and it shall be its duty to sue for and recover the same in the same manner as may be prescribed by law for like suits against railroad companies.

Guilty of extortion, when. Ib. §3.

Art. 4584. The said commission shall have authority and it shall be its duty to call upon such express companies for reports, and in-

Ib. §4.

investigate their books in the same manner as may be prescribed by law for the regulation of railroad companies, and the said commission shall have power and authority to institute suits, sue out such writs and process as may be applicable and authorized for the regulation of railroad companies. All laws, rules and regulations made and prescribed for the government and control of railroads, in so far as they are applicable, shall be of equal force and effect against all express companies.

CHAPTER FOURTEEN.

ISSUANCE OF STOCKS AND BONDS REGULATED.

<p>State vested with regulation of issue of bonds, stocks, etc.....4584a Prohibiting incumbrance above value.4584b Commission to ascertain and report values, etc.....4584c Effect of judicial or other sale, etc....4584d Purchasers complying with law may issue bonds4584e</p>	<p>Article</p>	<p>Authority to issue bonds to be secured.4584f How certificates of stock shall issue....4584g Prerequisites to issue of bonds.....4584h Duty of secretary of state.....4584i Forfeiture of charter.....4584j Certificates, bonds, etc., void.....4584k Penalties hereunder4584l State not liable.....4584m</p>	<p>Article</p>
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Regulation of issue of stocks, bonds, etc., by railroads vested in state. (Acts 1893, p. 57.)

Article 4584a. Among other things, the power and authority of issuing or executing bonds, or other evidences of debt, and all kinds of stock and shares thereof, and the execution of all liens and mortgages by railroad corporations in this state, are special privileges and franchises, the right of supervision, regulation, restriction, and control of which has always been, is now, and shall continue to be vested in the state government, to be exercised according to the provisions of this and other laws.

Issue of incumbrance above value of the road prohibited; except, etc. Ib.

Art. 4584b. Hereafter no bonds or other indebtedness shall be increased or issued or executed by any authority whatsoever, and secured by lien or mortgage on any railroad or part of railroad, or the franchises or property appurtenant or belonging thereto, over or above the reasonable value of said railroad property; provided, that in case of emergency, on conclusive proof shown by the company to the railroad commission that public interests or the preservation of the property demand it, the said commission may permit said bonds, together with the stock in the aggregate, to be executed to an amount not more than fifty per cent over the value of said property.

Railroad commission to ascertain and report railroad values; proceeding incident thereto. Ib.

Art. 4584c. It shall be the duty of the railroad commission to ascertain, and in writing report to the secretary of state, the value of each railroad in this state, including all its franchises, appurtenances and property. After it shall have prepared said report of value, the commission shall give the company interested ten days notice in writing, by registered letter to the president, treasurer or receiver of said railroad, to the effect that said report is ready to be made, and that if it have any objections thereto it must file them, in writing, within forty days after said service, or the same will be so deposited with the secretary of state as correct. Should the company or its duly authorized representative file with said commission any objections to said report of value, the commission shall duly investigate and pass on the same. On investigation, if the commission conclude that its report of value is too low or too high, then it shall make the necessary correction before filing it. Should no objections be filed within the time permitted, or being filed and on examination found without merit, the commission shall forthwith

file its said report in the office of the secretary of state, where it shall remain as a public record, as a limitation for the issuance of indebtedness under the limitations prescribed in article 4584b. To promote public interests and protect private rights, the commission after due notice under the rule herein prescribed, may correct its report of value of any railroad at any time it may deem proper.

Art. 4584d. Every judicial or other sale of any railroad in this state hereafter made, which shall have the effect to discharge the property so sold from liability in the hands of purchasers for claims for damages, unsecured debts, or junior mortgages against such railroad company so sold out, shall have the effect to annul and cancel all claims of every stockholder therein to any share in the stock of such railroad; and it shall not be lawful for said purchasers or for any railroad company organized hereafter to operate said railroad, to issue any stock in lieu of the old stock or to allow any compensation therefor in any manner whatever, nor shall all or any part of the debt to satisfy which such sale is made be continued or held as a claim or lien on said property.

Effect of judicial or other sale of railroad.
Ib.

Art. 4584e. The purchasers of said property who procure it clear of incumbrance, or any company organized by their consent to operate said railroad under and in pursuance of the laws of this state, may issue stock and bonds in the proportion that they may deem advisable, subject to the rules, restrictions and limitations prescribed in articles 4584b, 4584c and 4584d.

Purchasers complying with law may issue bonds, etc.

Art. 4584f. Should any company or corporation authorized to construct, own or operate a railroad in this state desire to issue bonds or other indebtedness, to be secured by lien or other mortgage on its franchises and property, in advance of the completion of the said railroad, it shall make application to and first procure the consent of the railroad commission thereto. In said application it shall exhibit to the commission its contract with the construction company, if it have any; the profile of its completed road or part of road, the evidence of its right of way, depot grounds, terminal facilities; the extent and value of work done or in process of completion; the amount of property received; the amount of stock subscribed and the amount paid in; and all other necessary facts showing the value of the franchises and property proposed as security for said contemplated debts. If, on investigation, the commission is satisfied that the company is acting in good faith, and that its contract with the construction company is reasonable and fair to the public, then it shall authorize the execution of said indebtedness and lien to the extent necessary for the demands of the work, at no time to be more than fifty per cent over the value of the whole property and franchises. In executing said bonds the company shall comply with article 4584g, and have them registered, as required in article 4584h.

Authority to issue bonds before completion of roads must be obtained, etc.
Ib.

Art. 4584g. Each railroad company now existing, or that shall hereafter be organized or that shall be reorganized under the laws of this state, or which shall increase its stock under the laws of this state, shall issue certificates to the subscribers to its said stock under the following regulations: A majority of the board of directors shall meet in person in the state of Texas, at the principal office of such company, and shall cause to be made a list of the subscribers to such stock, showing the number of shares subscribed by each, the amount of stock represented by each share and the amount actually paid, labor done or property received on each share of stock, and shall cause to be affixed to each name on said list a number, begin-

Prescribing how certificates of stock shall issue.
Ib.

ning with number one, or the next highest number of any certificate previously issued. The president of the board or presiding officer of the meeting at which the issuing of such certificates of stock is authorized, shall make a certificate to said statement to the effect that the same is correct, and that the amount of money paid, labor done and property received as stated is correct, and shall sign the same in person. Such statement shall thereupon be entered at large upon the minutes, and after having the seal of the company affixed thereto, shall be attested by the secretary of the company and deposited with the railroad commission, and by it filed and preserved in the office. The secretary of the company shall then be authorized to make out and deliver to each stockholder in said list a certificate corresponding with said statement in number, name, number of shares, amount of stock represented by each share, and the amount of money or its equivalent paid upon each share, which certificate shall be signed by the president of the said railroad company, attested by the secretary, with the seal of said company affixed. No railroad company shall hereafter increase its stock unless all existing shares of stock shall have been paid in full, or all unpaid shares of such stock have been sold out as forfeited under the law. When the certificates to be issued are for increase of stock, the statement herein required to be made by the board of directors shall state that all existing shares of stock have been paid in full or that all shares not paid in full have been sold out or forfeited under the law. In no event shall the stock exceed the value of the railway property, and the correct aggregate amount of stock so issued by each railway company shall be certified to and registered in the office of the secretary of state by or at the instance of the railroad commission.

Prerequisites
to the issue
by railroad
companies of
bonds, etc.
Ib.

Art. 4584h. Whenever any railroad company in this state shall hereafter desire to make, issue, and sell any bonds or evidences of debt which are to become a lien on its property, it shall comply with the laws of this state regulating the same, and in addition thereto shall have said bonds prepared, signed by the president of the company, and attested by the secretary, with the seal of the company attached thereto. Each bond shall be numbered, beginning with number one, or the next highest number of any preceding bond issued by it, and continue consecutively until all are numbered. The bonds shall be dated, made payable at a time not exceeding thirty years from date, and shall bear interest not exceeding six per cent per annum. The said bonds, when thus prepared, shall be presented to the railroad commission of this state, with a statement in writing, signed and sworn to by the president of said company, showing the amount of the stock of said company, and the amount of outstanding bonds, if any, of said company. If said bonds are such as are permitted under this law, and the railroad commission shall be so satisfied, it shall approve said bonds, and shall issue to the secretary of state a direction to register said bonds, specifying the numbers, dates, and amounts thereof. And said commission shall keep in its office a correct record of the bonds so approved by it, giving the name of the company, the numbers, dates of execution and maturity of the bonds, the amount and rate of interest of each, and the date of approval; provided, that this provision shall not apply to receivers' certificates where the amount does not exceed one hundred thousand dollars.

Duty of sec-
retary of state.

Art. 4584i. When any such bonds shall be presented to the secretary of state with the direction aforesaid to register, he shall regis-

ter said bonds by entering a description thereof in a book to be kept for that purpose, which shall show the date, number, amount, when due, the rate of interest on each bond, and also the date when the same is registered. The secretary of state shall endorse on each bond, under the seal of his office and his official signature, together with the date thereof, as follows: "This bond is registered under the direction of the railroad commission of Texas." No bond or other evidence of debt hereafter issued by or under the authority of any person, firm, corporation, court, or railroad company, whereby a lien is created on its franchises or property situated in this state, shall be valid or have any force until the same has been registered as required herein.

Art. 4584j. If any railroad company owning or operating a railroad in this state shall hereafter issue or consent to or cause to be issued any bonds or other evidences of debt to be or become a lien on its railroad property so owned or operated, or shall issue any stock not in accordance with the provisions of this chapter, such action shall work a forfeiture of the charter of said company, and it shall be the duty of the attorney general to institute proceedings in a court of competent jurisdiction to forfeit the same.

Forfeiture of
charter.
Ib.

Art. 4584k. Every certificate of stock in any railroad company, and every bond and other evidence of debt operating as a lien upon the property of such railroad company, which shall be made, issued or sold without a compliance with this chapter, shall be void.

Certificates,
bonds, etc.,
void.

Art. 4584l. Each and every railroad director, president, secretary or other official who shall knowingly make any false statement upon which to secure the registration of any bond or other evidence of debt as aforesaid, or who shall by false statement knowingly made procure of the railroad commission direction to the secretary of state to register the same, and which shall be by the secretary of state registered, or shall with knowledge of such fraud negotiate or cause to be negotiated any such bond or other security issued in violation of this chapter, shall be guilty of a felony, and upon conviction thereof in any court of competent jurisdiction shall be punished by confinement at hard labor in the state penitentiary for a term of years not less than two nor more than fifteen, and shall likewise be liable to any creditor of such company for the full amount of damages sustained by such wrongful conduct. Venue in such cases shall be in either of the district courts held in Travis county, or in the county where the principal office of the railway company whose property is sought to be so incumbered or affected is located.

Penalties
hereunder;
venue.

Art. 4584m. That nothing in this law, and no act done or performed under or in connection with it, shall be held or construed to bind or make the state of Texas liable to pay or guarantee, in any manner whatsoever, any obligation, debt, or claim executed or assumed under or by virtue of its provisions.

State not lia-
ble, etc.

TITLE XCV.

Records.

CHAPTER ONE.

TRANSCRIBING OLD RECORDS.

	Article		Article
Old records to be transcribed, when...	4585	Commissioners' court to have records transcribed, when.....	4590
Shall conform to the original record and be compared	4586	How to be transcribed.....	4591
Correctness to be certified, and effect of same	4587	To have effect of judicial proceedings, when	4592
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Old records to be transcribed, when and how. (Act Aug. 7, 1876, p. 84, §1.)

Article 4585. [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 preservation 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.

Shall conform to the original record and be compared. Ib. §2, 1.

Art. 4586. [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 said clerk or sworn deputy so transcribing the same, assisted by some other sworn deputy.

Correctness to be certified to, and effect of same. Ib. §2.

Art. 4587. [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.

Original books to be preserved. Ib.

Art. 4588. [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.

To what records this chapter shall apply.

Art. 4589. [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.

Art. 4590. It shall be the duty of the county commissioners' court of any county in this state which may have been created, either in whole or in part from the territory of any other county or counties in this state, or to which may have been added since its creation the territory of any other county or counties in this state, to secure a well-bound book or books, as the case may be, and require the county clerk to transcribe or have transcribed from the record of said other county or counties by a sworn deputy, all the deeds, mortgages, conveyances, incumbrances and muniments of title affecting or in any wise relating to all lands and real property which are or may be embraced in the territory so acquired from another county or counties, and which deeds, mortgages, conveyances, incumbrances and muniments of title appear of record in said county or counties from which said territory may have been taken as having been there recorded prior to the transfer of territory as aforesaid, and when the acquired territory may have been from more than one county, then the clerk shall provide a separate record book for each county, which said book or books shall be indexed and arranged as is now required for record books in case of deeds and mortgages.

Commissioners' court to have records transcribed, when. (Acts of 1879, p. 105.)

Art. 4591. Said records shall be transcribed in a plain, legible hand, and with some standard ink of a permanent black color, and when so transcribed 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.

How to be transcribed. Ib. §2.

Art. 4592. 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 under their official oath of office at the conclusion of the record with the impress of the seal of said court affixed on the same page the correctness of the same, after which said transcribed record or records shall have all the force and effect in judicial proceedings in the courts of this state as the original records.

To have effect of judicial proceedings, when. Ib. §3.

Art. 4593. The county clerk or person making such transcript shall be entitled to compensation therefor at the rate of fifteen cents for one hundred words, and for comparing and verifying the same, payable out of the county treasury upon warrant issued under order of the commissioners' court.

Compensation. Ib. §4.

Art. 4593a. The county commissioners of any county of this state are authorized and empowered to contract with the clerk of the county courts of their respective counties to cause to be translated into the English language, by themselves or their deputies, the archives and records of their offices, or any part thereof, now in the Spanish language, in their official custody, relating to titles to land, and copy said translations in a well bound book or books; provided, that they shall not contract to pay more than fifteen cents per hundred words for both the translation and recording.

Translations may be authorized by commissioners' courts. (Acts of 1893, p. 168.)

Art. 4593b. When said archives and records, now in Spanish, are translated and recorded as hereinbefore provided, said records in English shall have the same force and effect as if the archives and instruments were originally made and recorded in the English language, and certified copies may be used as evidence and otherwise, for like purposes and with like effect as the originals are [and] certified copies of records of the originals can now be used; and said record books hereinbefore provided for shall be and are hereby made permanent archives and records of the county clerks' office of the counties when so translated and recorded.

Effect of such translations, etc. Ib.

CHAPTER TWO.

SUPPLYING LOST RECORDS, ETC.

	Article		Article
Lost records may be supplied by proof, etc.	4594	Effect of judgment, etc.....	4598
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Lost records may be supplied by proof, etc. (Act July 13, 1876, p. 45, §1.)

Article 4594. [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. 4595. [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. 4596. [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. 4597. [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. 4598. [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.

Art. 4599. [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.

Certified copies may be recorded.
Ib. §3.

Art. 4600. [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 any of the courts of this state in the same manner and with like effect as certified copies of the original record.

Original deeds, etc. recorded again, when.
Ib. §4.
(Acts of 1879, ch. 35, p. 35.)

Art. 4601. [4293] Judgments, orders and decrees when substituted as hereinbefore provided, shall carry all the rights thereunder in every respect as the originals, especially preserving the liens from the date of the originals, and giving the parties the right to issue executions under the substituted judgments as under the originals.

Judgments shall have force of originals.
Ib.

TITLE XCVI.

Registration.

CHAPTER ONE.

RECORDERS AND THEIR DUTIES.

[As to chattel mortgages, see title "Liens," chapter four.]

	Article		Article
County clerks shall be recorders.....	4602	Record shall take effect, when.....	4607
What shall be their seal.....	4603	Shall keep alphabetical indexes, etc.....	4608
Shall provide books, etc.....	4604	What they shall contain.....	4609
Shall keep memorandum and give receipt.....	4605	Same subject	4610
Shall record without delay in the order presented	4606	Shall give attested copies, when.....	4611
		Separate record books.....	4612

County clerks shall be recorders. (Act May 12, 1846, §1.) P. D. 5001.

Article 4602. [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. 4603. [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. 4604. [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. 4605. [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 record without delay in the order presented. Ib. §13. P. D. 5013.

Art. 4606. [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.

Record shall take effect from date of deposit. Ib. §14. P. D. 5014.

Art. 4607. [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.

Art. 4608. [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. 4609. [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. 4610. [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. 4611. [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,
1836, §36.)
P. D. 4979.

Art. 4612. [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.

[As to registration of foreign wills, see title "Wills."]

Article	Article
Before whom acknowledgment may be made in this state.....4613	Handwriting may be proved, when.....4625
Without this state and within the United States4614	Evidence must prove, what.....4625
Without the United States.....4615	Proof, how made when grantor has made his mark.....4627
Acknowledgment, how made.....4616	Proofs, how made and certified.....4628
Party must be known or proven.....4617	Officers are authorized to administer oaths, etc.....4629
Acknowledgment of married woman, when and how taken.....4618	Subpoena shall issue, when.....4630
Certificate of officer.....4619	May compel attendance and answers of witness4631
Form of certificate of acknowledgment.....4620	Statement of the acknowledgment, etc., to be recorded.....4632
Form of certificate of acknowledgment of married woman.....4621	What statement for record shall contain.....4633
Proof of instrument by witness.....4622	Statement shall further recite.....4634
Witness must be personally known to the officer4623	The book to be a public record.....4635
Form of certificate of proof by witness.....4624	Action for damages will lie by person injured4635

Before whom acknowledgment may be made in this state.
(Act May 6, 1871, §1.)
P. D. 7418.

Article 4613. [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.

Without this state and within the United States.
Ib. §1.
P. D. 7419.

Art. 4614. [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. 4615. [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 charge 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. 4616. [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. 4617. [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.

Art. 4618. [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.

Acknowledgment of married woman, when and how taken.
(Act April 30, 1846, §1.)
P. D. 1003.

Art. 4619. [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.

Certificate of officer.

Art. 4620. [4312] The form of an ordinary certificate of acknowledgment must be substantially as follows:

Form of certificate of acknowledgment.

“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.

“Given under my hand and seal of office this _____

[Seal] day of _____, A. D. ____.

“_____.”

Art. 4621. [4313] The certificate of acknowledgment of a married woman must be substantially in the following form:

Form of acknowledgment by a married woman.
Ib.
P. D. 1003.

“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.

“Given under my hand and seal of office this _____

[Seal] day of _____, A. D. ____.

“_____.”

Art. 4622. [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.

Witness must be personally known to officer.
 Ib. §10.
 P. D. 5010.

Art. 4623. [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.

Form of certificate of proof by witness.

Art. 4624. [4316] The certificate of the officer, where the execution of the instrument is proved by a witness, 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 _____, 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].

“Given under my hand and seal of office this _____ day of _____, A. D. ____.

“_____.”

Handwriting may be proved, when.

Art. 4625. [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:

1. When the grantor and all the subscribing witnesses are dead.
2. When the grantor and all the subscribing witnesses are non-residents of this state.
3. When the place of their residence is unknown to the party desiring the proof, and can not be ascertained.
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. 4626. [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. 4627. [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 4625 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.

Art. 4628. [4320] The proof 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.

Proofs, how made and certified.
Ib.
P. D. 5009.

Art. 4629. [4321] Officers authorized to take the proof of instruments of writing under the provisions of this chapter are also authorized in such proceedings—

Officers are authorized to administer oath, etc.

1. To administer oaths or affirmations.
2. To employ and swear interpreters.
3. To issue subpoenas.
4. To punish for contempt as hereinafter provided.

Art. 4630. [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.

Subpoena shall issue, when. (Act Feb. 9, 1860, §1.)
P. D. 5020.

Art. 4631. [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 provided further, 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.

May compel attendance and answers of witness.

Art. 4632. [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.

Statement of acknowledgment, etc., to be recorded. (Act April 28, 1874, p. 155, §1.)
P. D. 7418b.

Art. 4633. [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 such officer, if by any one, and the known or alleged residence of such person.

What the statement for record shall contain.
Ib. §1.

Art. 4634. [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 instru-

Statement shall further recite.
Ib. §1.

ment, the name of the original grantee shall be mentioned, and the county where the same is situated.

The book to be a public record.
 lb.

Art. 4635. [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.

Action for damages will lie by person injured.
 lb.

Art. 4636. [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.

CHAPTER THREE.

INSTRUMENTS AUTHORIZED TO BE RECORDED, AND THE EFFECT OF RECORDING.

Article	Article
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Deeds to be recorded, where.....	4641
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Partition to be recorded.....	4649
Decree may be abbreviated.....	4650
Titles to chattels, where recorded.....	4651
Record of any grant, etc., when notice.....	4652

Patents and grants may be recorded without proof.

Article 4637. [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.

Copies of archives recorded.
 (Act Jan. 19, 1839, §2.)
 P. D. 4984.

Art. 4638. [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.

What may be recorded.
 (Act May 12, 1846, §4.)
 P. D. 5004.

Art. 4639. [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 or tenements, or goods and chattels, or movable property of any description.

All sales, etc., to be void as to creditors and purchasers, unless registered.
 (Act Feb. 5, 1840, p. 69, §4.)
 P. D. 4988.

Art. 4640. [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 hereafter 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.

Art. 4641. [4333] All deeds, conveyances, mortgages, deeds of trust, or other written contracts 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; provided, that all such instruments, when relating to real estate situated in an unorganized county, shall be recorded in the county to which such unorganized county is attached for judicial purposes, in a well-bound book, or books, to be kept for that purpose, separately from the records of the county to which it is attached and from other unorganized counties; and it shall be the duty of the clerk or other officer having the custody of such books, when such unorganized county shall be organized, or has been detached therefrom and attached to another county for judicial purposes, to deliver such book, or books, without charge, to the proper officer of such newly organized county, or of the county to which it is attached for judicial purposes, when demanded by him; and where such records have been heretofore kept in separate books, they shall also be delivered in like manner as above, and in each case the same shall become archives of the county to which it is so delivered. Where such records have not heretofore been kept separately, upon the organization or attachment of such unorganized county to another organized county, a certified transcript from the records of such instruments so recorded shall be obtained by such new clerk or officer, and when so made the same shall in like manner become archives of such newly organized county, or county to which such unorganized county may be attached, as the case may be.

Deeds, etc., to be recorded in county where land is situated. (Acts of 1887, p. 94.)

Art. 4642. [4334] Every conveyance, covenant, agreement, deed, deed of trust or mortgage in this chapter mentioned, or certified copies of any such original conveyance, covenant, agreement, deed, deed of trust or mortgage copied from the deed or mortgage records of any county in the state where the same has been regularly recorded, although the land mentioned may not have been situated in the county where such instrument was recorded, and which shall have been acknowledged, proved or certified according to law, may be recorded in the county where the land lies, and when 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 have been so acknowledged, proved or certified and delivered to such clerk to be recorded, and from that time only; provided, however, that all certified copies filed and recorded under the provisions of this article shall take effect and be in force from the time such certified copy was filed for record; and provided further, that nothing in this shall be construed to make valid any instrument which was at the time of its execution from any cause invalid.

Deed, etc., valid against subsequent creditors from, etc. (Acts of 1895, p. 157.) P. D. 4994.

Art. 4643. [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.

Marriage contract, when valid. (Acts of 1887, p. 94, §2.) P. D. 4987.

Art. 4644. [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,

Recorder shall record, etc. (Act May 12, 1846, p. 236, §5.) P. D. 5005.

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.
Judgments to
be recorded,
when.
Ib.
P. D. 5006.

Art. 4645. [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.

Art. 4646. [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 judgments or abstracts of judgments are attested under the hand and seal of the clerk of the court where such judgment was obtained.

Transfers of
judgment to
be recorded,
etc.
(Acts of 1889,
p. 103.)

Art. 4647. The sale of a judgment or any part thereof of any court of record within this state, or the sale of any cause of action or interest therein after suit has been filed thereon, shall be evidenced by a written transfer, which when acknowledged in the manner and form required by law for the acknowledgment of deeds may be filed with the papers of such suit, and when thus filed by the clerk it shall be his duty to make a minute of said transfer on the margin of the minute book of the court where such judgment of said court is recorded, or if judgment be not rendered when said transfer is filed, the clerk shall make a minute of such transfer on the court trial docket where the suit is entered, giving briefly the substance thereof, for which services he shall be entitled to a fee of twenty-five cents, to be paid by the party applying therefor, and this article shall apply to any and all judgments, suits, claims and causes of action, whether assignable in law and equity or not. When said transfer is duly acknowledged, filed and noted as aforesaid, the same shall be full notice and valid and binding upon all persons subsequently dealing with reference to said cause of action or judgment, whether they have actual knowledge of such transfer or not.

Judgment in
justice courts,
how recorded.
(Acts of 1889,
p. 133.)

Art. 4648. Whenever land is sold under execution or order for sale issuing out of a justice court in this state, upon the application of any party interested in said land, it shall be the duty of the justice of the peace having the custody of the execution and judgment upon which said execution issued to make from said records a complete transcript of said judgment and the execution issued thereon and levied on land, together with the levy and return of the officer executing the same thereon indorsed, and to certify to the correctness thereof officially; then said transcript shall be admitted to record in the county where the land is situated in the same manner in which deeds are recorded and with like effect, which said transcript or certified copy thereof, under the hand and seal of the county clerk of the county where said transcript has been recorded, shall be admitted in evidence in all the courts of this state in like manner and with like effect that the original judgment and execution with indorsements thereon would have if offered.

Partition to be
recorded.
(Act Feb. 9,
1860, p. 75, §4.)
P. D. 5023.

Art. 4649. [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. 4650. [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. 4651. [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. 4652. [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.....4653 Registration of property of.....4654 May present and prove schedule for record4655 Property acquired after marriage.....4656	In what county registration must be made4657 Registration confirmed4658 Conclusive as to subsequent creditors, etc.4659

Article 4653. [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. 4654. [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. 4655. [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

May present and prove schedule for record. Ib. §2. P. D. 4996.

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.

Property ac-
quired after
marriage.
Ib. §3.
P. D. 4997.

Art. 4656. [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.

In what coun-
ty registration
must be made.
Ib. §4.
P. D. 4998.

Art. 4657. [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. 4658. [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. 4659. [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.....	4660	Effect of such judgment in such action.....	4665
Conveyance heretofore made to be gov- erned by existing laws.....	4661	Record of certain titles confirmed.....	4666
Recording, and as evidence, to be gov- erned by the then existing laws.....	4662	Shall be evidence, when.....	4667
Party may have action to correct error when certificate is imperfect.....	4663	Old registration operative after creating new county.....	4668
May obtain judgment proving imperfect instrument.....	4664	Attachment proceedings to be recorded, when.....	4669

Penalty for
failing to re-
cord, etc.
(Act May 12,
1846, p. 236, §13.)
P. D. 5018.

Article 4660. [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.

Art. 4661. [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 anything contained in this title, but shall depend for its validity and legality upon the laws in force when the act was performed.

Conveyances heretofore made to be governed by the then existing laws.

Art. 4662. [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.

Recording, and as evidence, to be governed by the then existing laws.

Art. 4663. [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.

Party may have action to correct error where certificate is imperfect.

Art. 4664. [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. 4665. [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. 4666. [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. 4667. [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. 4668. [4358] Where an instrument in writing has been duly registered in the proper county, and any property conveyed or incumbered by such instrument shall fall within another county sub-

Old registration operative after creating new county.

sequently 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.

Attachments
to be recorded,
when.
(Acts of 1839,
p. 80.)

Art. 4669. Whenever an attachment is levied upon real estate the officer levying the writ shall immediately file with the county clerk of the county or counties in which the real estate so levied upon is situated, a copy of the writ, together with a copy of so much of his return as relates to the land in said county. Said clerk shall enter in a book to be kept for that purpose, the names of the plaintiffs and defendants in attachment, the amount of the debt and the return of the officer in full. Should the writ of attachment be quashed or otherwise vacated, the court in which the attachment suit is pending shall cause a certified copy of said order to be sent to the county clerk of the county or counties in which the real estate levied upon is situated. Said clerk shall, upon the receipt of the same, enter in the book aforesaid the names of the plaintiffs and defendants and record the order of the court in full. If the real estate levied upon is situated in any county other than the one in which the suit is pending, then, in case of failure to make the record aforesaid, the attachment lien shall not be valid against subsequent purchasers for value and without notice and subsequent lienholders in good faith. The county clerk of every county in this state shall keep a well-bound book for the record of the matters aforesaid, and shall keep a direct and reverse index thereto in which shall be entered the names of all the plaintiffs and defendants in the various attachments recorded by him, and the order of the court aforesaid shall be indexed in the same manner, and certified copies of such records shall be admissible in lieu of the original writ and entries. Clerks of the county court shall receive the same fees for recording the matter herein provided for as they are now allowed by law for recording deeds, to be paid by the plaintiff, and said fees to be taxed as a part of the costs in the case in which the attachment is issued and paid and collected as other costs. Sheriffs shall receive a fee of one dollar for making the copy and return herein provided for, to be taxed and collected as other costs in the suit.

TITLE XCVII.

Roads, Bridges and Ferries.

CHAPTER ONE.

ESTABLISHMENT OF PUBLIC ROADS.

Article	Article
What roads declared public.....4670	May order opening, but damages to be paid first, etc.....4694
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Not to be changed unless, etc.....4672	May change roads, when.....4696
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If report approved, to be paid, etc.....4693	

Article 4670. [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.

What roads are declared to be public. (Act July 29, 1876, p. 64, §6.)

Art. 4671. [4360] The commissioners' courts of the several counties shall have full powers 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.

Commissioners' courts to open, etc. (Acts of 1889, p. 21.)

Art. 4672. No public roads shall be altered or changed except for the purpose of shortening the distance from the point of beginning to the point of destination, unless the court upon a full investigation of the proposed change finds that the public interest will be better served by making the change; that said change shall be by unanimous consent of all the commissioners elected.

Shall not be changed, except, etc. Ib.

Art. 4673. In all cities and incorporated towns in the state of Texas in which from any cause there is not a de facto municipal government in the active discharge of their official duties, the commissioners' court of the county in which such city or incorporated town is situated shall assume and have control of the streets and alleys thereof, and shall have the same worked under the law and regulations for the working of public roads, and such streets and alleys for the purposes of this article shall be held and denominated

Roads in towns and cities where no incorporation. (Acts of 1885, p. 25.)

public roads; provided, that all residents of any city or town, having no de facto city government, not otherwise exempt from road duty, shall be liable to road service as in other cases.

First class roads from county site to county site. (Acts of 1884, p. 63, §1.)

Art. 4674. The commissioners' courts of the several counties shall see that at least one first-class road of the width prescribed by law is laid out and opened from the county seats of their respective counties on the most direct and practicable route to the lines of their county in the direction of the county seats of each adjacent county, where no part of another county intervenes between the county seats of such counties; or if a border county, to meet the nearest road to the border; and if any adjacent county is not organized, then in the direction of the center of such county. And the commissioners' court of a county to which one or more unorganized counties are attached for judicial purposes shall lay out and open at least two first-class roads sixty feet in width through the extent of each such unorganized county to intersect at right angles as nearly as may be at the center of the county, and to meet at the county lines similar roads of the adjacent counties. In counties now having public roads substantially complying with the preceding requirement as to course, the court shall be required only to give such roads the width of sixty feet and clear them of obstructions; such roads, however, shall not be laid out across orchards, yards, lots or graveyards, or within one hundred feet of a residence, without the consent of the owner; provided, that this law shall not apply to counties where there already exists a sufficiency of public roads.

Jury of view to be appointed. Ib. §2.

Art. 4675. It shall be the duty of each commissioners' court on their own motion to appoint a jury of view to lay out the roads required in the preceding article, and to mark and define them, and to report in writing such marks and any prominent natural objects that may aid in defining the route selected. And upon the report of the jury of view such roads shall be declared public highways of the first-class, and the court shall order the overseer to open the same, and where the country is open prairie to plow a furrow on each side of the road and establish monuments at convenient intervals.

Damages, how assessed. Ib. §3.

Art. 4676. If damages are claimed by any owner of land so appropriated for public highways, or by any person where inclosed premises are crossed, a jury to assess such damages shall be appointed as now provided in article 4690 of the Revised Statutes.

When damages are excessive, etc. Ib. §4.

Art. 4677. If the damages assessed be excessive, the court may appoint another jury to assess them, and upon the second report, if the damages are deemed excessive, the court may change the road so as to avoid the property so greatly damaged; provided, such change will not divert the road more than one-quarter of a mile from a direct line; provided further, that in all cases where the owner or owners of lands over which such roads shall pass shall have the right of appeal to the district court where the same shall be tried (by first giving a bond in a sufficient amount to cover all costs), and if a greater amount of damages is there obtained the county shall pay the excess and the costs, but if no greater damages are obtained the party taking the appeal shall pay all costs; provided, that such appeal shall in no case delay or prevent the immediate opening of such road after the damages assessed as above have been tendered.

Owners of inclosed lands shall have nine months, etc. Ib. §5.

Art. 4678. Persons through whose inclosed premises such roads are laid out shall have nine months to remove and adapt their fences to the road. Where the county is unorganized the owners of fences

shall not be required to remove them until such county shall become organized, and not then until fifty residents of such county shall petition the commissioners' court for the removal of such fences; provided, that at all times the owners of such fences shall have at the crossing of such road convenient gates not less than twelve feet wide.

Art. 4679. The juries of view and the juries to assess damages shall, for the organized counties, be allowed such compensation as is now provided by law; and for the unorganized counties the sum of two dollars per day for the actual time employed, and five cents per mile for the actual distance traveled to mark and lay out the road or to assess the damages, which amounts, on sworn accounts, shall be paid out of the respective county funds. And any person summoned as a viewer as provided in this chapter who shall fail or refuse to perform the service required of him by law as such viewer shall be fined for contempt by the commissioners' court for every such failure not less than five dollars nor more than ten dollars, to be collected as other fines are collected; provided, that all reasonable excuses shall be heard.

Compensation
of jurors.
Ib. §6.

Art. 4680. Where there are no persons in the unorganized counties to act or willing to serve on the jury of view or jury to assess damages, the court shall designate citizens of their own county to perform the service.

In organized
counties, etc.
Ib. §7.

Art. 4681. Nothing in the preceding articles shall be construed to prohibit the opening of other roads as is now provided by law. Roads laid out under the provisions of article 4674 shall not be changed except for the purpose of securing a better and more direct route, and then only after an actual view by a majority of the commissioners' court of that portion of the road sought to be changed.

Such roads to
be changed,
when.
Ib. §8.

Art. 4682. It shall be the duty of the commissioners' courts to classify all public roads in their countries into first, second and third class roads, and to act as supervisors of roads in their respective precincts, as hereinafter provided, and commissioners' courts may, on their own motion, where it is deemed necessary, open new roads or straighten existing ones.

To classify all
public roads.
(Acts of 1884,
p. 20.)

Art. 4683. [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.

First class
roads.
Ib. §2.

Art. 4684. [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.

Second class
roads.
Ib. §3.

Art. 4685. [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.

Third class
roads.
Ib. §4.

Art. 4686. [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

Application
for new road,
etc., shall not
be granted
until notice
has been given,
etc.
Ib. §6.

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.

Application,
how made.
(Acts of 1884,
p. 20.)

Art. 4687. 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 in 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; provided, that where one or more persons live within an inclosure either or all of them may petition the commissioners' court for a third class road or neighborhood road to their nearest trading points, mills, gins, school and church houses and county seats, and the courts shall open such roads, as hereinafter provided in the opening of third class roads; and provided further, that no part of a public road shall be discontinued unless a new road connecting that part of such road not discontinued shall first be opened; and provided further, that no part of a first or second class road shall be reduced to a road of a lower class.

How laid out.
Ib.

Art. 4688. [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, with or without the county surveyor, as ordered by the commissioners' court, to lay out, survey and describe such road to the greatest advantage to the public, and so that the same can be traced with certainty; and the field notes of such survey or description of the road shall be included in the report of the jury; and, if adopted, shall be recorded in the minutes of the commissioners' court.

Oath of jury.
Ib.

Art. 4689. [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:

"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."

Duty of jury
to perform the
work and re-
port.
Ib.

Art. 4690. [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.

Notice to
owner.
(Acts of 1884,
p. 21.)

Art. 4691. The jury of freeholders provided for in article 4688 shall issue a notice in writing to the land owners through whose lands such proposed road may run, or to his agent or attorney, of the time when they will proceed to lay out such road, or when they will assess the damages incidental to the opening of the same, which notice shall be served upon such owner, his agent or attorney, at least five days before the day therein named. If such owner is a non-resident of the county the notice may be given by publication in a newspaper published in the county, as notices are required to be given to non-resident defendants as to actions in the district or county court, and the road may be established after four weeks' publication, the cost of publishing to be paid as directed by judgment of the court.

Art. 4692. The owner of any such land may, at the time stated in such notice, or previously thereto, present to the jury a statement in writing of the damages claimed by him, if any, incidental to the opening of such road, and thereupon the jury shall proceed to assess the damages, returning their assessment and the claimant's statement with their report, to the commissioners' court.

Statement by owner of damages.
Ib.

Art. 4693. [4372] If the commissioners' court shall approve of the report and order such road to be opened, they shall consider the assessment and damages by the jury and the claimant's statement thereof, and allow to such owner just damages and adequate compensation for the land taken, and when paid or secured by deposit with the county treasurer to the credit of such owner they may proceed to have such road opened. If the owner of the land is not satisfied with the assessment by the commissioners' court he may appeal therefrom as in cases of appeal from judgment of justice's court, but such appeal shall not prevent the road from being opened, but shall be only to fix the amount of damages. If no claim of damages is filed with such jury after notice as provided in the preceding article the same shall be considered as waived.

If report approved, damages to be paid, etc.

Art. 4694. [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. (Acts of 1876, p. 64.)

Art. 4695. [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.

Art. 4696. The commissioners' court may alter or change the course of any public road, in accordance with article 4672 of this chapter, 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.

May change roads, when.

Art. 4697. [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.

Duty of clerk when jury of view is appointed.
Ib. §14.

Art. 4698. [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.

Service of order of appointment on juror.
Ib.

Defaulting juror shall be punished, how.
Ib.

Art. 4699. [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.

Roads on lines.
(Acts of 1884,
p. 22.)

Art. 4700. For the further and better providing for public roads, any lines between different persons or owners of land, any section line, or any direct line through an inclosure containing twelve hundred and eighty acres of land or more, 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 fifteen 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.
(Acts of 1876,
p. 65.)

Art. 4701. [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. 4702. [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. 4703. [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. 4704. [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.

May open lines, when.
(Acts of 1884,
p. 24.)

Art. 4705. [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 the same to be opened by the owners thereof and left open for a space of fifteen feet on each side of said line.

Notice of the order of the court shall be served upon the owners of the land.
Ib.

Art. 4706. [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.

Such roads not required to be controlled by the public.
Ib.

Art. 4707. [4386] The commissioners' court shall not be required to keep any such road as is mentioned in the last seven articles worked by the road hands as in the case of other public roads.

Art. 4708. [4387] All costs attending the proceedings provided for in relation to opening of neighborhood roads shall be paid by the county if the application be granted.

Costs, etc.
(Acts of 1884,
p. 24.)

Art. 4709. [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. 4710. [4389] The 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 and free of obstructions at the top; provided, that when the right of way for any third class road or neighborhood road has been granted to the county without cost the owner of such land shall have the right to put a gate across such road or roads, but where such right of way has been condemned and paid for according to existing law the county commissioners' court shall have the right to prevent any obstruction of such a road by a gate.

Right to erect
gates.
(Acts of 1884,
p. 24.)

Art. 4711. [4390] The amount of damages to be allowed to the owners of said lands for opening the line 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.

Damages, how
assessed.
Ib.

Art. 4712. The county commissioners of the several counties are hereby constituted supervisors of public roads in their respective counties, and each commissioner shall supervise the public roads within his commissioner's precinct once each year, and shall receive as compensation therefor three dollars per day for the time actually employed in the discharge of his duties, to be paid out of the road and bridge fund of the county; provided, that no commissioner shall receive pay for more than ten days in each year. He shall also make a report to the first regular term of the commissioners' court held in his county during the year, said report to be made under oath, and to state—

Commission-
ers as super-
visors.
Ib.

1. The condition of all roads and parts of roads in his precinct.
2. The condition of all culverts and bridges.
3. The amount of money remaining in the hands of overseers subject to be expended upon the roads within his precinct.
4. The number of mile posts and finger boards defaced and torn down.
5. What, if any, new roads of any kind should be opened in his precinct, and what, if any, bridges, culverts or other improvements are necessary to place the roads in his precinct in good condition and the probable cost of such improvements; also, the name of every overseer who has failed to work the road, or in any way neglected to perform his duty.

Said report shall be spread upon the minutes of the court, to be considered in improving public roads and determining the amount of taxes to be levied therefor.

Art. 4713. No entire road of the first or second class shall hereafter be discontinued except upon vacation by order of the commissioners' court or non-use for a period of three years.

Not to be dis-
continued, un-
less.
(Acts of 1884,
p. 24.)

Art. 4714. The report made by the supervisors of public roads to the commissioners' court, as provided for in article 4712, shall be submitted, together with all contracts made by said court since its last report for any work on any road, to the grand jury, at the first term of the district court thereafter.

Reports, etc.
Ib.

Across public lands, etc.

Art. 4715. No public road shall be opened across lands owned and used or for actual use by the state, educational, eleemosynary, or other public state institutions for public purposes and not subject to sale under the general laws of the state, without the consent of the trustees of said institution and the approval of the governor of the state, and the roads heretofore opened across such lands may be closed by the authorities in charge of any such lands whenever they deem it necessary to protect the interests of the state, upon repayment to the county where the land is situated, with eight per cent interest, the amount actually paid out by said county for the condemnation of said lands as shown by the records of the commissioners' court.

CHAPTER TWO.

APPOINTMENT OF OVERSEERS.

<p>County to be laid off into road precincts, etc.4716 Overseers to be appointed, when.....4717 May be made at any time.....4718 Vacancy, how filled, etc.....4719 Clerk to make copies of appointment....4720 Order shall show, what.....4721 Service of order, etc.....4722</p>	<p>Article Term of service of, etc.....4723 Persons not compelled to serve, etc.....4724 Overseer shall notify clerk.....4725 County shall appoint another.....4726 Non-refusal considered as accepting....4727 Clerk shall insert, what, on copies of appointment, etc.....4728 Clerk shall post list.....4729</p>
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County shall be laid off into road precincts. (Act July 29, 1876, p. 63, §5.)

Article 4716. [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.

Overseers to be appointed, when. (Acts of 1884, p. 25.)

Art. 4717. An overseer shall be appointed and hands apportioned by said court for each road precinct at the time of establishing the same; and at the first regular term of 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; provided, that hands shall as nearly as practicable be apportioned to work on the road precinct nearest to their place of abode; and provided further, that the supervisor of public roads shall at any time apportion any hands in his precinct who from any cause may not have been apportioned as otherwise provided in this chapter.

Appointment of overseers, etc., may be made at any time. (Acts of 1876, p. 63.)

Art. 4718. [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.

Vacancy in overseership, how filled. Ib.

Art. 4719. [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 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. 4720. [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.

Art. 4721. [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. Order of appointment of overseer shall show, what. Ib.

Art. 4722. [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. Service of order and return. Ib.

Art. 4723. [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. Term of service of overseer. Ib. \$5.

Art. 4724. [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. Persons not compelled to serve as overseers, when, etc. Ib. \$23.

Art. 4725. [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. Overseer not liable shall notify clerk of non-acceptance. Ib.

Art. 4726. [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. County judge shall thereupon appoint another. Ib.

Art. 4727. [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. Unless overseer give notice of non-acceptance shall be considered as accepting. Ib.

Art. 4728. [4403] It shall be the duty of the clerk to insert on the copies of all orders of appointments of overseers issued by him the duties required of overseers in regard to their non-acceptance of such appointment. Clerk shall insert what on copies of appointment. Ib.

Art. 4729. [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. Clerk shall post list of overseers, etc. Ib. \$29.

CHAPTER THREE.

PERSONS LIABLE TO WORK ON ROADS, AND THEIR RIGHTS AND DUTIES.

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Age limitation of workers on public roads, etc.4730a	Payment of money shall be required....4733
Liability to road service.....4731	Hand shall furnish tool.....4734
	Duty of hand to work, etc.....4735
	Five days' work only can be required....4736

Article 4730. [4405] All male persons between the ages of eighteen and forty-five years shall be liable, and it is hereby made their duty, to work on, repair and clean out the public roads, under Who liable to road duty. (Acts of 1885, p. 43.)

provisions and regulations of this title, except ministers of the gospel in the active discharge of their ministerial duties, invalids, members of any company of volunteer guards organized under provisions of the title "Militia," and the members of all volunteer fire companies in the active discharge of their duties as firemen, who shall be exempt.

Age limitation of workers on public roads, etc. (Acts of 1895, p. 160.)

Art. 4730a. No person in this state under the age of twenty-one years, or over the age of forty-five years, shall be required to work upon the public roads of this state or upon the streets and alleys of any city or town of this state.

Fifteen days' residence fixes liability to work on road. (Acts of 1876, p. 65.)

Art. 4731. [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.

Substitute may be furnished. Ib.

Art. 4732. [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 is capable of performing a reasonable amount of work; otherwise he shall not be accepted.

Payment of money will exempt. Ib. §26.

Art. 4733. [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.

Hand shall take working tool with him. Ib. §17.

Art. 4734. [4409] Each person summoned to work on a road shall take with him an ax, 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.

Duty of hand, etc. (Acts of 1889, p. 21.)

Art. 4735. [4410] It shall be the duty of each road hand to perform his duties as such in accordance with the directions of his overseer, and a day's work, within the meaning of this law, shall be eight hours' efficient service, when said service is voluntarily performed.

Five days' work only. (Acts of 1883, p. 22.)

Art. 4736. [4411] No person shall be compelled to work on any public road or roads more than five days in each year.

CHAPTER FOUR.

POWERS AND DUTIES OF OVERSEERS.

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Article 4737. [4412] Every overseer shall cause the roads through his precinct to be worked twice in each year.

Road shall be worked twice each year. (Act July 29, 1876, p. 68, §16.)

Art. 4738. [4413] Overseers of roads shall have the power to call out all persons liable to work upon public roads at any time such overseer may deem it necessary, or when ordered by the commissioners' court or other competent authority, and such hands may be called out in detail, or the whole force at any one time, as may be deemed best, or as they may be directed, for the better improvement of the public roads.

Power to call out hands. (Acts of 1889, p. 2L.)

Art. 4739. [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. 4740. [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. 4741. [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 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.

Summons in writing may be served, how.

Art. 4742. [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 roads as many days as he was actually engaged in summoning the hands.

Overseer may appoint some one to summon hands. Ib.

Art. 4743. [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, or the justice of the peace of his precinct, a complaint in writing and under oath against each person who has been summoned to work and who has failed to work and 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.

To file complaints, where, etc. (Acts of 1884, p. 26, §3.)

Timber for causeways and bridges. (Acts of 1876, p. 68.)

Art. 4744. [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. 4745. [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. Whenever it is necessary to drain the water from any public road, the overseer shall cut a ditch for that purpose, having due regard to the natural water flow, and with as little injury as possible to the adjacent land owner; provided, that in such cases the commissioners' court shall cause the damages to such premises to be assessed and paid out of the general revenues of the county, and in case of disagreement between the commissioners' court and such owner, the same may be settled by suit as in other cases.

Ditches may be cut on land of adjacent owners, when. (Acts of 1884, p. 27.)

Overseer may exchange labor for wagons, etc. (Acts of 1876, p. 68.)

Art. 4746. [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 posts set up. Ib. §22.

Art. 4747. [4422] It shall be the duty of all overseers of roads to measure such parts of roads as are in 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. 4748. [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 to be replaced when removed. Ib.

Art. 4749. [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. 4750. [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. 4751. [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. 4752. [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. 4753. [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. Ib. §31.

Art. 4754. [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.)

Art. 4755. Overseers shall dismiss from the road any hand or hands, whether working for themselves or as substitutes for others, who shall fail to do good and efficient work, or who shall hinder other hands from doing their work properly, or dismiss any hand who may be intoxicated, or who shall refuse to obey any reasonable order of the overseers; and the overseer shall proceed against such hand or hands so dismissed in the same manner as if they had refused to obey the summons to work upon the road. Overseers to dismiss hands, when. (Acts of 1889, p. 22.)

CHAPTER FIVE.

ROAD COMMISSIONERS.

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Powers and duties, etc.....4757	May accept donations, etc.....4761
Expenditures of money by, etc.....4758	Law cumulative, etc.....4762
Court to see to expenditures.....4759	

Article 4756. Each county commissioners' court of this state may employ not exceeding four road commissioners for their respective counties, who shall be resident citizens of the district for which they are employed, and when more than one is employed, the district that each road commissioner is to control shall be defined and fixed by the court; such road commissioners when employed shall receive such compensation as may be agreed upon by the court, not to exceed two dollars per day for the time actually engaged. Each road commissioner when employed, before he enters upon his duties, shall execute a bond, payable to the county judge of the county and his successors in office, in the sum of one thousand dollars, with one or more good and sufficient sureties, to be approved by the county judge, and conditioned for a faithful performance of his duties. Commissioners' court may employ four road commissioners. (Acts of 1889, p. 134.)

Art. 4757. A road commissioner when employed shall have control over all overseers, hands, tools, machinery and teams to be used upon the roads in his district; and shall have the power to require overseers to order out his hands in any number he may designate for the purpose of opening, working or repairing the roads or building or repairing bridges or culverts of his district; and it shall be the duty of such road commissioner to see that all the roads and bridges of his district are kept in good repair, and he shall, under the direction and control of the commissioners' court, inaugurate a system of grading and draining public roads in his district, and see that such system is carried out by the overseers and hands under his control, and shall obey all orders of the commissioners' court; Powers and duties. Ib. §2.

and he shall be responsible for the safe keeping and liable for the loss or destruction of all machinery, tools or teams placed under his control, unless such loss is without his fault, and when he shall be discharged he shall deliver them to the person designated by the court.

Same.
Ib. §3.

Art. 4758. He shall expend such money as may be placed in his hands by the commissioners' court under its direction in the most economical and advantageous manner on the public roads, bridges and culverts of his district; and all his acts shall be subject to the control, supervision, orders and approval of the commissioners' court; he shall work the convicts and such other labor as may be furnished him by the commissioners' court; and when the road commissioner shall have funds in his hands to expend for labor on the roads, and when it shall be necessary for any overseer or overseers in his district to work more than five days during any one year upon the public roads, he may employ such overseers to continue their duties as such for such a length of time as may be necessary, and pay them for their services not more than one dollar and fifty cents per day for the time actually employed after the five days; provided, that hands shall not be required to work when there shall be on hand, after building and repairing bridges, a sufficient road fund to provide for the necessary work on the roads; and said road commissioner shall report to the commissioners' court at each regular term under oath, showing an itemized account of all money he has received to be expended on roads and bridges and what disposition he has made of the money, and showing the condition of all roads, bridges and culverts in his district, and such other facts as the court may desire information upon, and shall make such other reports and at such time as the court may desire.

Expenditure
of money by.

Shall report,
etc.
Ib. §4.

Commission-
ers' court to
see to expendi-
ture of road
fund.
Ib. §6.

Art. 4759. The commissioners' court shall see that the road and bridge fund of their county is judiciously and equitably expended on the roads and bridges of their county, and, as nearly as the condition and necessity of the roads will permit, it shall be expended in each county commissioners' precinct in proportion to the amount collected in such precinct; and in expending money in building permanent roads the money shall first be used only on first or second class roads, and on those which shall have the right of way furnished free of cost to make as straight a road as is practicable to obtain and having the greatest bonus offered by the citizens of money, labor or other property.

May make
rules and reg-
ulations for
working roads.
Ib. §7.

Art. 4760. The commissioners' courts are authorized to make all reasonable and necessary rules and orders for the working and repairing of public roads, and to utilize the labor to be used and money expended thereon, not in conflict with the laws of this state, and enforce such rules and orders; and they are further authorized to purchase or hire all necessary road machinery, tools or teams, and hire such labor as may be needed in addition to the labor now required of citizens to build or repair the roads.

May accept
donations of
money, etc.
Ib. §8.

Art. 4761. Commissioners' courts or road commissioners may accept donations of money, lands, labor of men, teams or tools, or any other kind of property or material to aid in building roads in their counties, and may authorize any person to make a drain along any public road for the purpose of draining his land, and require the person draining his land to do such work under the direction of the road commissioner.

Art. 4762. This chapter shall not be construed to repeal any existing law, but it is cumulative and in aid of existing law; provided, that when road commissioners are employed the county commissioners are not required to supervise the roads as required by article 4712 of the Revised Statutes; provided, nothing in this law shall be construed so as to require more than five days' service in one year of any citizen.

Law cumulative. Ib. §9.

CHAPTER SIX.

ROAD SUPERINTENDENTS.

[For counties exempt from the operation of this law, see Acts 1891, page 149.]

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Article 4763. The commissioners' court of any county in this state may appoint one road superintendent for such county, or one superintendent in each commissioner's precinct, and such courts are authorized by an order made at any regular term thereof to determine whether there shall be one road superintendent for the county or one for each of the commissioner's precincts therein. Such order shall be entered on the minutes of such court, and shall not be void for want of form, but a substantial compliance with the provisions of this chapter shall be sufficient; provided, no county shall be under the operation of this law whose commissioners' court does not appoint a road superintendent or superintendents as herein provided.

Commissioners' court may employ superintendent for county. (Acts of 1891, p. 149, §1.)

Art. 4764. In case such commissioners' court shall determine that there shall be one road superintendent, as provided in the preceding article, such court shall appoint a competent road superintendent for such county, and in case it is determined that there shall be four superintendents, then such court shall appoint a competent person as road superintendent for each commissioner's precinct in such county.

May determine number to be appointed Ib. §2.

Art. 4765. Each road superintendent, whether county or precinct, shall within twenty days after his appointment take and subscribe the oath required by the constitution, and enter into bond payable to the county judge and his successors in office, with good and sufficient sureties, to be approved by the county judge, in such sum as may be fixed by the commissioners' court, conditioned that he will faithfully do and perform all the duties required of him by law or the commissioners' court and that he will pay out and disburse the funds subject to his control as the law provides, or the commissioners'

Oath and bond of superintendent. Ib. §3.

court may direct, which bond shall be filed and recorded as other official bonds and shall not be void for the first recovery, but may be sued on from time to time until the full amount is exhausted.

Qualifications.
Ib. §4.

Art. 4766. Every road superintendent shall be a qualified voter in the county or precinct, as the case may be, for which he is appointed, and shall hold his office for two years or until his successor is appointed and qualified, but in all cases where the condition of the roads does not demand the continued services of the superintendent, his salary may in the discretion of the commissioners' court be suspended. The commissioners' court may for good cause remove any road superintendent, and in case of vacancy from any cause may appoint a successor, who shall hold his office for the unexpired term.

Salary.
Ib. §5.

Art. 4767. Each road superintendent shall receive such salary as may be fixed by the commissioners' court, to be paid on the order of said court at stated intervals, but the salary of the county superintendent, in counties of less than fifteen thousand inhabitants, shall never exceed one thousand dollars per annum, and in counties of more than fifteen thousand inhabitants, it shall not exceed twelve hundred dollars per annum. The salary of precinct superintendents in counties of less than fifteen thousand inhabitants shall not exceed three hundred dollars per annum, and in counties of over fifteen thousand inhabitants it shall never exceed four hundred dollars per annum.

Shall have supervision, etc., over roads subject to commissioners' court.
Ib. §6.

Art. 4768. The road superintendent, subject to the orders and directions of the commissioners' court, shall have the general supervision over all the public roads and highways of his county or precinct, as the case may be, and shall superintend the laying out of new roads, the making and changing of roads therein, the building of bridges therein (except where otherwise contracted), the working of the roads therein and all repairs to be made on the same, and over all county convicts worked on such roads, but this shall not prevent the commissioners' court from employing a person to watch and manage such convicts and direct the work to be done by them. Said road superintendent shall take charge of all tools, machinery, implements and teams placed under his control by the commissioners' court, and execute his receipt therefor, which shall be filed with the county clerk, and he shall be responsible for the safe keeping of all such machinery, tools, implements and teams, and the proper expenditure and paying out of all money belonging to the road fund that may come into his hands, and shall be liable for the loss, injury or destruction of any such tools, teams, implements or machinery, unless such loss occurred without his fault, and for the wrongful or improper expenditure of any such money, and upon the expiration of his term of office, or in case of his resignation or removal, he shall deliver all such money and property to his successor or such other person as the commissioners' court may direct.

Roads and bridges to be kept in repair, his duty, etc.
Ib. §7.

Art. 4769. It shall be the duty of each road superintendent to see that all of the roads and bridges in his county or precinct, as the case may be, are kept in good repair, and he shall, under the direction of the commissioners' court, inaugurate and carry out a system of working, grading and draining the public roads in his county or precinct, and shall see that every person subject to road duty in his county or precinct performs the work to which he is liable under the law. He shall act as supervisor of the roads in his county or precinct, as the case may be, and perform all the duties of supervisor that now devolve on the county commissioners under the existing

laws in counties not adopting this law, and he shall do and perform such other service as may be required of him by the commissioners' court.

Art. 4770. Each road superintendent in counties where the commissioners' court so directs, as soon as practicable, shall divide his county or precinct, as the case may be, into road districts of convenient size, to be approved by the commissioners' court, and define the boundaries thereof and designate the same by number, which boundaries shall be recorded in the road minutes of the commissioners' court; and he shall ascertain the names of all persons subject to road duty in each district and keep a record thereof and report the same to the commissioners' court.

County shall be divided into precincts or districts.
Ib. §8.

Art. 4771. Every road superintendent shall have power, and it shall be his duty, to call out all persons liable to work on the public roads at any time and in such numbers as he may deem necessary to work the roads in their respective districts, and he shall utilize all such labor to the best advantage in connection with other labor on the roads. The call shall be summons served in the manner and for the length of time prescribed by the law regulating the calling out of hands by overseers, but no person shall be compelled to work outside of his road district. The road superintendent may appoint any person subject to road duty in any district to summon the hands to work the roads therein, and such person shall be exempt from road service as many days as he was actually engaged in summoning the hands, and in case of emergency he may appoint a deputy to supervise any particular work. He may also contract with any person subject to road duty for the use of teams, and permit such person to discharge his road duty by the use of such double team, but he shall never allow more than two dollars a day for any team, nor more than three dollars for any hand and double team.

Shall call out all persons liable to work, etc.
Ib. §9.

Art. 4772. Each road superintendent shall make a report, under oath, to the commissioners' court at each regular term thereof, showing an itemized account of all money belonging to the road fund he has received, from whom received, and what disposition he has made of the same, the condition of all roads and bridges in his county or precinct, as the case may be, and such other matters as the court may desire information upon, and shall make such other report at such times as such court may require.

Shall make reports.
Ib. §10.

Art. 4773. The commissioners' court of any such county is authorized to purchase or hire all necessary road machinery, tools, implements, teams and labor required to grade, drain or repair the roads of such county, and said court is authorized and empowered to make all reasonable and necessary rules, orders and regulations not in conflict with law for laying out, working and otherwise improving the public roads, and to utilize the labor and money expended thereon, and to enforce the same. But no change in any road shall be made that lengthens the same without it is to the benefit of the traveling public or for the protection of private property, and then only upon the unanimous consent of the commissioners' court.

Commissioners' court may hire or purchase all machinery, etc., for working roads.
Ib. §11.

Art. 4774. Each road superintendent shall employ sufficient force to enable him to do the necessary work in his county or precinct, as the case may be, having due regard for the condition of the county road and bridge fund and the quality and durability of the work to be done, and shall buy or hire such tools, teams, implements and machinery as the commissioners' court may direct, and he shall work such roads in such manner as the commissioner may direct,

May employ sufficient force, etc.
Ib. §12.

and such work shall at all times be subject to the general supervision of the commissioners' court.

Shall make the best contracts, etc.
Ib. §13.

Art. 4775. Each road superintendent shall make the best contract possible for all labor, tools, implements or machinery that he is authorized to hire or purchase, and in payment therefor he shall issue to the person entitled thereto his certificate, showing the amount due and the purpose for which it was given, and upon approval by the commissioners' court a warrant shall issue therefor to the holder thereof on the county treasurer, to be paid by him out of the proper fund as other warrants. All such certificates shall be dated, numbered and signed by the road superintendent, and he and his sureties on his official bond shall be liable for all loss or damages caused by the wrongful issue of any such certificate or any extravagance in the amount thereof.

May improve road and bridge by contract.
Ib. §14.

Art. 4776. The commissioners' court of any such county may, when deemed best, construct, grade, gravel or otherwise improve any road or bridge by contract. In such case said court or the county judge may advertise, in such manner as said court may determine, for bids to do such work and the contract shall be awarded to the lowest responsible bidder, who shall enter into bond with good and sufficient sureties for the faithful compliance with such contract, but said court shall have the right to reject any and all bids. At the time of making any such contract the said court shall direct the county treasurer to pass the amount of money stipulated in such contract to a particular fund for that purpose, and the treasurer shall keep a separate account of such fund and the same shall not be used for any other purpose, and can only be paid out on the order of said court.

May require county convicts to work on roads.
Ib. §15.

Art. 4777. The commissioners' court may require all county convicts not otherwise employed to labor upon the public roads under such regulations as may be most expedient. Each county convict worked on the public roads in satisfaction of any fine and costs shall receive a credit thereon of fifty cents for each day he may labor. And the commissioners' court may order that the county pay to the officers of court as much as one-half of the costs due them and adjudged against such convict, and upon such order such payment shall be made. But no such costs nor any part thereof shall ever be paid until such convict has worked out the entire amount of such fine and costs as provided by law, and then only upon a certificate from such county or precinct superintendent to the effect that such costs have been so worked out. The commissioners' court may grant a reasonable commutation of time for which a convict would be compelled to work to pay his fine and costs, or for which he is committed, as a reward for faithful services and good behavior, and such court shall make proper rules and regulations under which such commutations may be granted.

May accept donations, etc.
Ib. §16.

Art. 4778. The commissioners' court may accept donations of money, land, teams, tools or labor, or any other kind of property or material, to aid in building or keeping up roads in the county, and said court or any road superintendent, by and with the concurrence of the commissioners, may authorize any person to make a drain along any public road, the same to be done under the direction of the road superintendent, or such other person as said court may direct.

May retain old system of working roads.
Ib. §17.

Art. 4779. The commissioners' court of any county may retain the system of working hands under road overseers as provided by

general laws, and place such overseers under the control of a county or precinct superintendent, under such lawful regulations as said court may prescribe, or may work with overseers without any superintendent, as may be deemed best.

Art. 4780. The commissioners' court of any county in any county in which a special tax for the maintenance of the public roads is levied and collected, as provided for in section 9 of article 8 of the constitution, shall not be compelled to require persons subject to road duty to work on the roads, as prescribed in existing general laws, but in such counties the roads shall be worked wholly by taxation, or by taxation in connection with road service, as such court may deem best. In any such county such court may reduce the number of days that persons liable to road duty may be required to work on the roads, but can never increase the number above five days in any one year.

May, in counties levying special tax, exempt persons from working roads.
Ib. §18.

Art. 4781. Each road superintendent shall keep an accurate account of all moneys received by him on account of the road or bridge fund, and pay the same over to the county treasurer within ten days after its collection, taking his receipt for the same.

Superintendent to keep accounts.
Ib. §19.

Art. 4782. Any person who shall knowingly or willfully destroy, injure or misplace any bridge, culvert, drain, sewer, ditch, sign-board, mile post or tile, or anything of like character, placed upon any road for the benefit of the same, shall be liable to the county and any person injured for all damages caused thereby.

Parties misplacing bridge shall be liable, etc.
Ib. §22.

Art. 4783. The county superintendent or the precinct superintendent, as the case may be, shall obtain from the tax collector of their counties as soon after the first day of January of each year as practicable, and before the first day of May thereafter, a full list of the delinquent poll tax payers of such county for the previous year, and the persons so appearing on said list and who are such delinquent poll tax payers shall be subject to road duty for the period of three days during such year, and they shall be summoned, as in other cases, to work the roads in the road district or precinct in which such person may reside; and the performance of the road service provided for in this article shall not exonerate the persons from any other road duty to which the persons performing the same may be subject, but this shall be taken as cumulative. The persons required to do road duty under the provisions of this article shall be subject to prosecution as provided in this chapter or other law of this state, and subject to the same liabilities and punishments provided for in other cases for failing to appear or do good work, when summoned so to do, as provided for by this chapter or other law of this state, and all such laws shall apply to parties required to work under the provisions of this article. And when they are convicted for so failing to work the roads, shall satisfy the fine and costs as in other misdemeanor convictions. But any person summoned to work on the road under the provisions of this article may satisfy such summons and be relieved from such duty by paying to the county road or precinct superintendent, as the case may be, three dollars; one-third of which sum shall go to the free school fund, and the balance to the road and bridge fund.

Delinquent poll tax payers to be subject to three days' road duty.
Ib. §23.

Art. 4784. The term "road" as used in this chapter includes road-bed, ditches, drains, bridges, culverts, and every part of such road, and the terms "work" and "working" include the opening and laying out of new roads, widening, constructing, draining, repairing, and everything else that may be done in and about any road.

"Roads," "work" and "working" defined.
Ib. §24.

Law cumulative.
Ib. §25.

Art. 4785. This law shall be cumulative of all other general laws on the subject of roads and bridges not in conflict herewith, and where not otherwise provided herein such general laws shall apply; but in case of conflict with other general laws the provisions of this chapter shall govern.

Counties exempt.
(Acts of 1891, ch. 97; Sen. Jour., 1895, p. 483.)

Art. 4785a. The counties of Grayson, Travis, Houston, Dallas, Limestone, Fayette, Galveston, Cherokee, Gonzales, Woods, Raines, Harrison, Shelby, San Augustine, Sabine, Newton, Jasper, Tyler, Morris, Marion, Victoria, Goliad, Refugio, Aransas, Calhoun, Jackson, DeWitt, Hopkins, Comal, Upshur, Blanco, Camp, Gillespie, Lavaca, Parker, Panola, Milam, Lamar, Hill, Smith, Gregg, McLennan, Harris, Washington, Titus, Cass, Franklin, Delta, Angelina, Nacogdoches, Bowie, Montgomery, Walker, Trinity, Red River, Henderson, Van Zandt, Tarrant and Jack counties are exempted from the provisions of this chapter; provided, that the county commissioners' courts of Dallas and Collin counties may accept and adopt the provisions of this act in lieu of the special acts for Dallas, Collin, Grayson and other counties, if in their judgment its provisions are better suited to Dallas and Collin county than the said special laws. [Chapter 97, Twenty-second Legislature.]

CHAPTER SEVEN.

ROAD TAX.

	Article		Article
Election for road tax, how ordered.....	4786	Duty of commissioners' court upon ob-	
Same subject	4787	taining result of election, etc.....	4789
Who qualified to vote, etc.....	4788	No bonds to issue.....	4790

Election for road tax, how ordered, etc.
(Acts of 1891, p. 51, §1.)

Article 4786. The commissioners' court of any county shall, upon presentation to it, at any regular session, of a petition signed by two hundred qualified voters, they being property taxpayers of the county, to order an election to determine whether there shall be levied upon the property within said county by said commissioners' court a road tax, not to exceed fifteen cents on the one hundred dollars worth of property under the provisions of the amendment of 1889, to the constitution of the state of Texas, adopted in 1890, order said election as hereinafter provided. It shall not be necessary to give any notice of such petition before the court can act on the same, but the court may act thereon without notice, and may make an order for such election, fixing the amount to be levied, not to exceed fifteen cents on the one hundred dollars, the election to take place at any time thereafter, not less than twenty nor more than ninety days from the date of making the order therefor.

Same.
Ib. §2.

Art. 4787. It shall not be necessary to give any formal notice of such election, except the county judge shall issue his election proclamation, and the fact that such election is to be held shall be published in the newspapers of the county as fully as practicable, and tickets for the election shall be printed by the county and sent to each voting precinct by the county judge before the election opens, and as long before such time as practicable. The expenses of the election shall be paid for by the county. If an election be ordered within ninety days of a general election, it shall be held on the day of the general election and as elections on other questions are held, but otherwise the commissioners' court shall order a special election

to determine whether said tax shall be levied, which shall be conducted as other elections, and the officers to conduct the same shall be appointed as in other cases.

Art. 4788. Only qualified voters who pay a property tax in the county shall be permitted to vote at such election. The tickets printed and to be voted shall have written or printed on them the words: "For the tax," and "Against the tax," and those who favor the tax shall vote the ticket, "For the tax," and those who oppose the tax shall vote the ticket, "Against the tax."

Who are qualified to vote; manner of voting. Ib. §3.

Art. 4789. If at any such election the majority of the qualified voters voting thereat shall vote for such tax, it shall not be necessary to make further proclamation of that fact than to count the votes as in other cases, and officially announce the result, and the commissioners' court shall thereby be authorized and required to levy a road tax in the same manner that other taxes are levied, in the amount specified in said order for such election, never to exceed fifteen cents on the one hundred dollars worth of property. Such levy shall be made at the same time other county taxes are levied, if such election is held in time therefor, but otherwise it may be made at any time before the rolls are made out and settlement affected. If, at the election, the proposition for said tax shall carry, no petition for its repeal shall be granted in less than two years. But if it fail to carry another petition may be granted in one year, but not sooner, and the order granting the second or any subsequent petition may fix a greater or less rate of levy, not to exceed fifteen cents on the one hundred dollars worth of property, and if no greater rate is levied for any one year the commissioners' court may lower the rate for the next year without a petition therefor. An election to repeal the levy may be ordered and held as in other cases, but there must be satisfactory proof presented to said commissioners' court that there is great dissatisfaction with such tax and that it is probable that a majority of the citizens of the county who are authorized to vote for said tax would vote for the repeal of the law, and unless such proof be made the petition to repeal shall not be granted.

Duty of commissioners' court upon obtaining result of election. Ib. §4.

Art. 4790. No bonds shall ever be issued under the provisions of this chapter.

No bonds to issue. Ib. §5.

CHAPTER EIGHT.

BRIDGES.

[For taxes for bridge purposes, see title "County Finances."]

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Commissioners' court power to have bridges built.....4792	When stream forms line of counties, expense of bridge to be joint.....4795
May contract for building of toll bridges.4793	Tolls assessed to pay bonds.....4796

Article 4791. [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.

Overseer shall have bridges built, when, etc. (Act July 29, 1876, p. 67, §20.)

Commissioners' court, power to have bridges built, etc.
(Act July 22, 1876, p. 51, §4.)

Art. 4792. [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.

May contract for building of toll bridges.
(Act Dec. 20, 1836.)
P. D. 5244.

Art. 4793. [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.

Shall take security from contractor to keep bridges in repair, etc.
Ib.
P. D. 5245.

Art. 4794. [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.

When streams form dividing line of counties expense of bridge to be joint, etc.
(Act Nov. 28, 1871, p. 42.)
P. D. 5883.

Art. 4795. [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.

Tolls assessed to pay bonds, etc.
Ib.
P. D. 5884.

Art. 4796. [4435] Whenever 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 NINE.

FERRIES.

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Article 4797. [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.

Who are entitled to license to keep. (Act Jan. 23, 1850.)
P. D. 3841.

Art. 4798. [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.

Shall not be for hire without license.
Ib.
P. D. 3842.

Art. 4799. [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.

Where stream is part of state boundary.
Ib.
P. D. 3842.

Art. 4800. [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.

License, how obtained.
Ib.
P. D. 3844.

Art. 4801. [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.

Rates of ferriage shall be established, etc. (Act Jan. 5, 1854.)
P. D. 3845.

Change of rates.
Ib.

Art. 4802. [4441] All changes of the rates of ferriage shall be entered of record and notice thereof furnished by the county clerks to the 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.

When owner refuses to keep ferry at the established rates.
Ib.

Art. 4803. [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.

License and bond to be renewed annually.
(Act Jan. 23, 1850.)
P. D. 3846-7.

Art. 4804. [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 not to issue until, etc.
Ib.
P. D. 3848.

Art. 4805. [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.

Rates of, to be delivered to person obtaining license.
Ib.
P. D. 3849.

Art. 4806. [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 posted at the ferry.
Ib.
P. D. 3850.

Art. 4807. [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.

Where ferryman delays or refuses, etc., to cross person.
Ib.
P. D. 3851.

Art. 4808. [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.

Art. 4809. [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. 4810. [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 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.

Where ferry-
man charges
more than,
etc.
Ib.
P. D. 3853.

Art. 4811. [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.

Penalty for
keeping, etc.,
without
license.
Ib.
P. D. 3854.

Art. 4812. [4451] In all cases where a recovery shall be had against the ferryman for violation of this law, 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.

Proceedings
against
sureties of
ferryman.
Ib.
P. D. 3855.

Art. 4813. [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.

Suit on bond.
Ib.
P. D. 3856.

Art. 4814. [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.

Temporary
license.
Ib.
P. D. 3857.

Art. 4815. [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.

License tax.
Ib.
P. D. 3858.

Art. 4816. [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

Where stream
is part of
county
boundary.
Ib.
P. D. 3859.

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. 4817. [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 XCVIII.

Salaries.

CHAPTER ONE.

EXECUTIVE DEPARTMENTS.

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Superintendents of the asylums.....4824	Superintendent of public buildings.....4833
Superintendent of orphan asylum.....4825	Adjutant-general.....4834
Deaf, dumb and blind for colored youths.4826	

Article 4818. [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, §5.)

Art. 4819. [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. 4820. [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 gen-
eral land
office.
Ib. §23.

Art. 4821. [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. 4822. [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-
general.
(Const., art.
5, §22.)

Art. 4823. [4462] The chief clerk of the comptroller's office, the chief clerk and receiving clerk of the general land office, the chief clerk of the state department, the chief clerk of the treasurer's office, and each librarian of the supreme court, shall receive such salaries as may be prescribed by law. Chief clerks,
etc.
(Acts of 1833,
p. 49.)

Art. 4824. [4463] The superintendents of the lunatic asylums, 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. 4825. The superintendent of the orphan asylum shall receive such salary each year as may be provided by the board of managers. In no case shall such salary be fixed at an amount exceeding one thousand dollars per annum. Superintend-
ent of orphan
asylum.
(Acts 1887, p.
127; amend.
1895, Sen.
Jour., p. 484,
No. 94.)

- Superintendent of colored blind, etc. (Acts of 1887, p. 150.) Art. 4826. The superintendent of the asylum for the deaf, dumb and blind colored youths shall receive an annual salary of fifteen hundred dollars.
- Superintendent of public instruction. (Acts of 1884, p. 41.) Art. 4827. The superintendent of public instruction shall receive an annual salary of twenty-five hundred dollars.
- Superintendent of house of correction. (Acts of 1889, p. 95.) Art. 4828. The superintendent of the house of correction and reformatory shall receive an annual salary of eighteen hundred dollars.
- Railroad commissioners. (Acts of 1891, p. 55.) Art. 4829. The railroad commissioners shall each receive an annual salary of four thousand dollars.
- State revenue agent. (Acts of 1891, p. 88.) Art. 4830. The state revenue agent shall receive an annual salary of two thousand dollars.
- Oculist of blind asylum. Art. 4831. [4464] The oculist of the blind asylum shall receive an annual salary of nine hundred dollars, and no more.
- Commissioner of agriculture, etc. (Act Aug. 21, 1876, p. 219, §5.) Art. 4832. [4465] The commissioner of agriculture, insurance, statistics and history shall receive an annual salary of two thousand dollars, and no more.
- Superintendent of public buildings. (Acts of 1889, p. 22.) Art. 4833. [4466] The superintendent of public buildings shall receive an annual salary of not to exceed one thousand five hundred dollars.
- Adjutant-general. (Act June 24, 1870.) P. D. 7143. Art. 4834. [4467] The adjutant-general shall receive an annual salary of two thousand dollars, and no more.

CHAPTER TWO.

JUDICIAL OFFICERS.

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Librarian of supreme court.....	4845

- Justices of supreme court and court of appeals. (Acts of 1892, S. S., p. 19 et seq.) Art. 4835. The chief justices of the supreme court and court of criminal appeals and the several associate justices of said courts, shall each receive an annual salary of four thousand dollars.
- Clerk. Art. 4836. The clerk of the supreme court shall receive an annual salary of twenty-five hundred dollars, and no more.
- Stenographer. Art. 4837. The stenographer of the supreme court shall receive an annual salary of fifteen hundred dollars, and no more.
- Civil courts of appeals. Art. 4838. The judges of the courts of civil appeals shall each receive an annual salary of thirty-five hundred dollars, and no more.
- District judges. (Acts of 1876, p. 219, §7.) Art. 4839. [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. 4840. [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. 46, §1.) Art. 4841. [4472] Special judges, commissioned by the governor, in obedience to section 11, 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.

Art. 4842. [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.

Special judge elected by attorneys. (Act Aug. 15, 1878, p. 140, §4.)

Art. 4843. [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.

Assistant attorney-general. (Acts March 13, 1879, p. 90, §3; Aug. 23, 1876, p. 285, §3.)

Art. 4844. [4475] District attorneys shall each receive an annual salary of five hundred dollars, and no more.

District attorneys. (Const., art. 5, §21.)

Art. 4845. [4476] Such librarian of the supreme court shall receive an annual salary of two hundred dollars, and no more.

Librarian of supreme court. (Act April 2, 1874.) P. D. 6463m.

CHAPTER THREE.

OFFICERS OF THE PENITENTIARIES.

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Inspectors4849	

Article 4846. [4477] The directors of the penitentiaries shall each receive an annual salary of two hundred and fifty dollars, and no more.

Directors of penitentiary. (Act Aug. 19, 1876, p. 194, §6.) (Acts of 1879, ch. 52, §61, p. 54.)

Art. 4847. The superintendent of penitentiaries shall receive an annual salary of twenty-five hundred dollars and actual traveling expenses when on official duty.

Superintendents. (Acts of 1881, p. 102.)

Art. 4848. The assistant superintendent shall receive an annual salary of seventeen hundred dollars and actual traveling expenses when on official business.

Assistant superintendent. (Acts of 1881, p. 47.)

Art. 4849. The inspectors shall each receive an annual salary of two thousand dollars, and no more, to include traveling expenses.

Inspectors. Ib. §63.

Art. 4850. The physicians of the penitentiaries shall receive an annual salary of one thousand dollars.

Physicians. Ib. §64.

Art. 4851. The chaplain shall receive an annual salary of six hundred dollars.

Chaplains. (Acts of 1887, p. 25.)

Art. 4852. The financial agent of the penitentiaries shall receive an annual salary of three thousand dollars, and no more.

Financial agent. (Acts of 1891, p. 102.)

CHAPTER FOUR.
GENERAL PROVISIONS.

	Article		Article
Salaries shall not be changed during term of office.....	4853	May be required to produce evidence of qualification by comptroller, when....	4858
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Pay of special judge elected.....	4857		

Salaries shall not be changed during term of office.

Article 4853. [4481] The salaries of officers shall not be increased nor diminished during the term of office of the officers entitled thereto.

Salaries payable monthly.

Art. 4854. [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.

Salary of special judge, how ascertained. (Act July 12, 1876, p. 45, §2.)

Art. 4855. [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.

How special judge commissioned by the governor shall obtain pay. lb. §3.

Art. 4856. [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.

Special judge elected, etc., how he may obtain his pay. (Act Aug. 15, 1876, p. 140, §4.)

Art. 4857. [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.

Required produce evidence of qualifications to comptroller, when. (Acts of 1881, p. 7, §1.)

Art. 4858. The comptroller of public accounts, the state treasurer, county commissioners' courts, county treasurers and any and all other officers of this state, or of any municipal division thereof, whether herein enumerated or not, who are authorized or required by law to audit, or pay, or order to be paid, claims due from the state, or any county or municipal division thereof, to any person or persons, as a salary, or as fees, compensation, perquisites or emoluments for official services rendered by such person, as an officer thereof, shall, upon the demand of any citizen of this state, before auditing, paying or ordering to be paid, any such claims as aforesaid, require such person presenting such claim to produce the certificate of his election or appointment to such office directed by the laws of this state to be issued to such officer; or, if his claim be founded upon the judgment or decree of a court of this state, authorized by the laws of this state

to hear and determine the claims of persons to office, then a copy of the record of such judgment or decree certified under the hand and seal of the legal custodian of such record to be a true copy thereof.

Art. 4859. It shall not be lawful for any officer or court of this state or of any municipal division thereof, to allow, audit, pay or order to be paid, the claim of any person for salary, compensation, fees, perquisites, emoluments or services, as an officer of the state, or of any municipal division thereof, except to such person as has been duly elected such officer by the qualified voters of this state, and whose election has been ascertained and certified or declared in the manner required by the laws of this state, or who has been appointed such officer by the lawful appointing power under the constitution and laws of this state, or who has been adjudged entitled thereto by a state court of competent jurisdiction of this state, and has qualified as such officer in accordance with the requirements of the laws of this state.

Salary to be paid only, when.
Ib. §2.

Art. 4860. No person shall be held by the laws of this state entitled to pay for services as an officer thereof, or of any county or municipal division thereof, or to exercise any of the powers of jurisdiction of an officer thereof, unless he shall have been elected, appointed or adjudged entitled thereto, as specified in article 4859; and the official acts of any person claiming a right to exercise such power or jurisdiction, contrary to the provisions of this law, are and shall be held to be null and void.

Who entitled to compensation.
Ib. §3.

Art. 4861. No court of this state shall have power, authority or jurisdiction to issue the writ of mandamus, or injunction, or any other mandatory or compulsory writ or process against any of the officers of the executive departments of the government of this state, to order or compel the performance of any act or duty which, by the laws of this state, they or either of them are authorized to perform, whether such act or duty be judicial, ministerial or discretionary.

Mandamus not to issue against public officer, when.
Ib. §4.

TITLE XCIX.

Seals and Scrolls.



Article	Article
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Private seals and scrolls dispensed with. (Acts April 28, 1873; Feb. 2, 1858.) P. D. 5087.

Unsealed instruments held to import consideration, etc. (26 Tex., p. 338.)

Article 4862. [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.

Art. 4863. [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 C.

Sequestration.

Article	Article
Writ of, may be issued by whom and for what causes4864	How judgment may be discharged.....4877
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Return of bond and judgment thereon.....4876	

Article 4864. [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:

In what cases to be issued. (Acts of 1887, p. 30.)

1. When a married woman sues for 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.

7. When any person sues to try the title to any real property, or to remove cloud upon the title to any such real property, or to foreclose a lien upon any such real property, or for a partition of real property, and makes oath that the defendant, or either of them in the event there be more than one defendant, is a non-resident of this state.

Affidavit, and what it shall state. (Acts of 1866, p. 120.) P. D. 5095a.

Art. 4865. [4490] No sequestration shall issue in any cause until the party applying therefor shall file an affidavit in writing stating—

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. 4866. [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. 4867. [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. 4868. [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. 4869. [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 custody of property. (Act Nov. 9, 1866, p. 121, §3.) P. D. 5101, 5106.

Art. 4870. [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.

Art. 4871. [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.

Art. 4872. [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. 4873. [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.

Art. 4874. [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.

Art. 4875. [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.

Art. 4876. [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.

Art. 4877. [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.

Art. 4878. [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.

Compensation of officer.
Ib.

Officer expending money may retain property until, etc.
Ib.

Defendant may replevy by giving bond.
(Act. Feb. 8, 1860.)
P. D. 5100.

Bond in case of personal property.
Ib.

In case of real estate.
Ib.

Return of bond and judgment thereon.
Ib.

Defendant may discharge judgment by return of property, etc.

When the property has been injured, etc.

Execution shall issue, when.

Art. 4879. [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.

Plaintiff may replevy, when, and his bond. (Act Nov. 9, 1866, p. 122, §3.)

P. D. 5101a.

Art. 4880. [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, is 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 his giving 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.

Bond shall be returned and the proceedings thereon, if forfeited.

Art. 4881. [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 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. 4882. [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. 4883. [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. 4884. [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. 4885. [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. 4886. [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.

Art. 4887. [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.

Purchaser
shall give
bond, etc.
Ib.

Art. 4888. [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.

Bond shall be
returned and
judgment,
etc., thereon,
when.
Ib.

[For venue in damage cases growing out of sequestration, see article 1194.]

[Note.—Article 4889 omitted as repealed by the report of the joint committee on amendments to the Revised Civil Codes, No. 96; Sen. Jour., 1895, p. 484.]

TITLE CI.

Sheriffs and Constables.

CHAPTER ONE.

OF SHERIFFS.

Article	Article
Election and term of office.....4890	To attend upon open courts.....4900
Vacancies, how filled.....4891	Shall execute all legal process.....4901
Oath and bond.....4892	And all legislative process.....4902
May act without commission.....4893	To discharge all duties imposed by law.....4903
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Failure to give new bond when required.....4895	Shall indorse all process.....4905
May appoint deputies, etc.....4896	May summon posse comitatus.....4906
Responsible for their acts.....4897	Unfinished business.....4907
May employ guards.....4898	
Shall receive prisoners from, etc.....4899	

I. ELECTION AND QUALIFICATION.

Election and term of office. (Const., art. 5, §23.) (Act May 12, 1846, p. 265, §1.) P. D. 5108.

Article 4890. [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.

Vacancies, how filled. 1b.

Art. 4891. [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.

Oath and bond. (Act May 12, 1846, p. 265, §2.) P. D. 5109.

Art. 4892. [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. 4893. [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.

May act without a commission. (Act Dec. 20, 1836, p. 179, §2.) P. D. 5102.

Art. 4894. [4518] When any person elected sheriff shall neglect, refuse or fail from any cause whatever, 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 county commissioners' court shall proceed to appoint a sheriff to fill the vacancy, who shall hold his office for the unexpired term.

Neglect to qualify. (Acts of 1885, p. 89.)

Art. 4895. [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.

Failure to give new bond when required. (Acts of 1836, p. 178.) P. D. 5110.

II. POWERS, DUTIES AND LIABILITIES.

Art. 4896. [4520] Sheriffs shall have the 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 of their principals, and every person so appointed shall, before he enters upon the duties of his office, take and subscribe to 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; provided, that the number of deputies appointed by the sheriff of any one county shall be limited to not exceeding three in the justice precinct in which is located the county site of such county; and a list of these appointments shall be posted up in a conspicuous place in the clerk's office so that all can see them; provided further, that no person shall be appointed a deputy sheriff who stands convicted for a felony, and an indictment for a felony of any deputy sheriff appointed shall operate a revocation of his appointment as such deputy sheriff; provided, that any sheriff may appoint one deputy in addition to the above enumerated for each justice precinct in addition to the precinct where the county site is situated; and all sheriffs having more deputies than are provided for in this law shall make the number of his deputies conform to the provisions of the same.

May appoint deputies, etc. (Acts of 1889, p. 23.)

Art. 4897. [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.

Responsible for their acts. (Acts of 1846, p. 265.) P. D. 5113.

Art. 4898. [4522] Whenever in any county it may become necessary to employ guards for the safe keeping of prisoners and the se-

May employ guards. Ib.

curity 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. 179, §14.)

Art. 4899. [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.

P. D. 5104.
To attend upon courts. (Act May 12, 1846, p. 265, §13.)

Art. 4900. [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.

P. D. 51.
Shall execute all legal process. Ib. §8.
P. D. 5115.

Art. 4901. [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 23, 1872, p. 19.)
P. D. 7102a et seq.

Art. 4902. [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.

To discharge all duties imposed by law.

Art. 4903. [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.

List of fugitives to be sent to adjutant-general. (Acts of 1887, p. 44, §1; amend. 1895, Sen. Jour. No. 97, p. 484.)

Art. 4904. It shall be the duty of each sheriff in this state upon the close of any regular term of the district court in his county, or within thirty days thereafter, to make out and forward by mail to the adjutant-general of this state a certified list of all persons who, after indictment for a felony, have fled from said county. Such lists shall contain the full name of each of such fugitives, with a description giving his age, height, weight, color and occupation, the complexion of skin and the color of eyes and hair, and any peculiarities in person, speech, manner or gait that may serve to identify such fugitive, so far as the sheriff may be able to give them, and shall state the offense with which such person is charged. The adjutant-general shall prescribe, have printed and forward to the sheriffs of the several counties the necessary blanks upon which are to be made the lists herein required.

Shall indorse all process. (Act May 12, 1846, p. 265, §14.)
P. D. 5121.

Art. 4905. [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.

May summon posse comitatus. Ib. §10.
P. D. 5117.

Art. 4906. [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.

Art. 4907. [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
1. Election, qualification, etc.	2. Powers, duties and liabilities.
Election and term of office.....4908	Duties in general.....4915
Appointed, how, in unorganized counties.4909	May summon posse comitatus.....4916
Vacancies, how filled.....4910	Failure to execute or return process.....4917
Bond and oath.....4911	Failure to pay over collections.....4918
May act without commission.....4912	May execute process, where.....4919
Neglect to qualify.....4913	Unfinished business4920
Failure to give new bond.....4914	

I. ELECTION, QUALIFICATION, ETC.

Article 4908. [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; provided, that where in any such justice's precinct there may be a city of eight thousand or more inhabitants, such constable may appoint no more than two deputies, who shall qualify as required of deputy sheriffs.

Term of office.
(Acts of 1885, p. 17.)

Art. 4909. 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.

Appointed, how, in unorganized counties.
(Acts of 1879, p. 89.)

Art. 4910. [4532] Vacancies in the office of constable shall be filled by the commissioners' court until the next succeeding general election.

Vacancies, how filled.

Art. 4911. [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

Bond and oath.
(Act May 12, 1874, p. 251, §2.)
P. D. 981.

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.

May act without commission.

Art. 4912. [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. 251, §4.)
P. D. 983.

Art. 4913. [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. 4914. [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. 4915. [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. 4916. [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. 4917. [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. 4918. [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.

Art. 4919. [4541] Every constable may execute any process, May execute process, where, Ib. §14. P. D. 993.
 civil or criminal, throughout his county and elsewhere, as may be provided for in the Code of Criminal Procedure or other law.

Art. 4920. [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. Unfinished business. Ib. §13. P. D. 992.

TITLE CII.

Stock Laws.

CHAPTER ONE.

OF MARKS AND BRANDS.

Article	Article
Owners of stock to have mark and brand.....4921	Brands of minors.....4926
Each county to have brand.....4922	When stock to be branded.....4927
Owner may place brand on his stock.....4923	Disputes, how settled.....4928
May counterbrand, when.....4924	Marks and brands to be recorded.....4929
Duty of secretary of state.....4925	Unrecorded brands no evidence.....4930

Owners of stock to have mark and brand. (Act March 20, 1848, p. 156, §1.) P. D. 4655.

Article 4921. [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.

County brands. (Acts of 1883, p. 76.)

Art. 4922. The several counties in this state shall have a brand for horses and cattle, said brand to be known and designated as the "County brand." The county brand of each county in the state shall be as follows:

County brands.

Anderson	A. A.	Caldwell	C. A.
Andrews	A. N.	Calhoun	C. H.
Angelina	A. L.	Callahan	C. L.
Aransas	A. R.	Cameron	C. M.
Archer	A. H.	Camp	C. P.
Armstrong	A. M.	Carson	C. R.
Atascosa	A. T.	Cass	C. S.
Austin	A. U.	Castro	C. T.
Bandera	B. A.	Chambers	C. B.
Bastrop	B. S.	Cherokee	C. K.
Bailey	B. I.	Childress	C. D.
Baylor	B. R.	Clay	C. Y.
Bee	B. E.	Cochran	C. C.
Bell	B. L.	Coleman	C. E.
Bexar	B. X.	Collin	C. I.
Blanco	B. N.	Collingsworth	C. W.
Borden	B. D.	Colorado	C. N.
Bosque	B.	Comal	C. O.
Bowie	B. O.	Comanche	C. J.
Brazoria	B. B.	Concho	C. V.
Brazos	B. Z.	Cooke	C. U.
Briscoe	B. H.	Coryell	C. X.
Brown	B. W.	Cottle	C. 2.
Burleson	B. U.	Crockett	C. 3.
Burnet	B. T.	Crosby	C. 4.

Dallas	D. A.	Howard	H. R.
Dallam	D. L.	Houston	H. 4.
Dawson	D. N.	Hunt	H. U.
Deaf Smith	D. S.	Hutchinson	H. H.
Delta	D. T.	Jack	J.
Denton	D. O.	Jackson	J. A.
De Witt	D. E.	Jasper	J. P.
Dickens	D. I.	Jefferson	J. E.
Dimmitt	D. M.	Johnson	J. H.
Donley	D. N.	Jones	J. O.
Duval	D. D.	Karnes	K.
Eastland	E. A.	Kaufman	K. A.
Edwards	E. D.	Kendall	K. E.
Ellis	E. L.	Kent	K. T.
El Paso	E. P.	Kerr	K. R.
Encinal	E. N.	Kimble	K. I.
Erath	E. R.	King	K. N.
Falls	F. A.	Kinney	K. O.
Fannin	F. N.	Knox	K. X.
Fayette	F. E.	Lamar	L. A.
Fisher	F. I.	Lamb	L. M.
Floyd	F. L.	Lampasas	L. P.
Fort Bend	F. B.	La Salle	L. S.
Franklin	F. K.	Lavaca	L. C.
Freestone	F. R.	Lee	L. E.
Frio	F. O.	Leon	L. 4.
Galveston	G. A.	Liberty	L. I.
Gaines	G. I.	Limestone	L. T.
Garza	G. R.	Lipscomb	L. B.
Gillespie	G. L.	Live Oak	L. O.
Goliad	G. D.	Llano	L.
Gonzales	G. O.	Lubbock	L. K.
Gray	G. Y.	Lynn	L. N.
Grayson	G. N.	Madison	M. 1.
Greer	G.	Marion	M. 2.
Gregg	G. G.	Martin	M. 4.
Grimes	G. M.	Mason	M. N.
Guadalupe	G. E.	Matagorda	M. R.
Hale	H.	Maverick	M. K.
Hall	H. A.	McCulloch	M. C.
Hamilton	H. I.	McLennan	M. L.
Hansford	H. F.	McMullen	M.
Hardeman	H. N.	Medina	M. A.
Hardin	H. D.	Menard	M. D.
Harris	H. S.	Milam	M. I.
Harrison	H. X.	Mitchell	M. H.
Hartley	H. T.	Montague	M. E.
Haskell	H. 6.	Montgomery	M. M.
Hays	H. Y.	Moore	M. O.
Hemphill	H. M.	Morris	M. S.
Henderson	H. E.	Motley	M. T.
Hidalgo	H. G.	Nacogdoches	N. S.
Hill	H. L.	Navarro	N. A.
Hockley	H. K.	Newton	N.
Hood	H. O.	Nolan	N. O.
Hopkins	H. P.	Nueces	N. E.

Ochiltree	O. H.	Stephens	S. E.
Oldham	O. O.	Stonewall	S. L.
Orange	O.	Swisher	S. I.
Palo Pinto	P. P.	Tarrant	T. A.
Panola	P. A.	Taylor	T.
Parmer	P. R.	Terry	T. E.
Parker	P. K.	Throckmorton	T. H.
Pecos	P.	Titus	T. I.
Polk	P. K.	Tom Green.....	T. G.
Potter	P. O.	Travis	T. S.
Presidio	P. R.	Trinity	T. R.
Raines	R.	Tyler	T. L.
Randall	R. A.	Upshur	U. P.
Red River	R. R.	Uvalde	U.
Refugio	R. E.	Van Zandt	V.
Roberts	R. S.	Victoria	V. I.
Robertson	R. O.	Walker	W. K.
Rockwall	R. L.	Waller	W.
Runnels	R. N.	Washington	W. N.
Rusk	R. K.	Webb	W. E.
Sabine	S. B.	Wharton	W. T.
San Augustine	S. A.	Wheeler	W. H.
San Jacinto	S. J.	Wichita	W. A.
San Patricio	S. P.	Wilbarger	W. R.
San Saba	S. S.	Williamson	W. I.
Scurry	S.	Wilson	W. L.
Shackelford	S. D.	Wise	W. S.
Shelby	S. H.	Wood	W. O.
Sherman	S. N.	Yoakum	Y.
Smith	S. T.	Young	Y. O.
Somervell	S. O.	Zapata	X.
Starr	S. R.	Zavala	X. X.

Owner may put county brand on his stock.
Ib. §3.

When stock removed from county may be counter-branded.
Ib. §4.

Secretary of state to furnish lists of brands.
Ib. §7.

Brands of minors.
(Acts of 1848, p. 156.)
P. D. 4660.

When stock to be branded.
Ib. §2.
P. D. 4656.

Disputes, how settled.
Ib. §3.
P. D. 4657.

Art. 4923. The owners of all horses and cattle, in addition to their private brand, may place said county brand on all horses and cattle owned by them, and shall be placed upon the neck of all animals so branded.

Art. 4924. Whenever any horses or cattle branded with the county brand are removed to another county, the owners of such stock may counterbrand with said county brand, and a bar under said county brand shall be used and known as the "County brand," and when so counterbranded the brand of the county in which said stock may be newly located may be placed on said stock.

Art. 4925. It shall be the duty of the secretary of state to furnish a printed list of the county brands to the county clerks of this state, who shall securely post the same in their office.

Art. 4926. [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.

Art. 4927. [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.

Art. 4928. [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.

Art. 4929. [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.

Art. 4930. [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.

PROTECTION OF LIVE STOCK.

Article	Article
Inspection for glanders, etc.....4931	Law cumulative.....4935
Report to county judge—duty of inspec- tor4932	Compensation for killing wolves, etc.....4936
Condemned animals to be killed.....4933	Proof, how made, etc.....4937
Payment for animals killed, fee, etc....4934	Same4938

Article 4931. If at any time it shall come to the knowledge of any county judge of any county in this state, by affidavit of any credible citizen of his county, stating that affiant has reason to believe and does believe that glanders or farcy exists among any horses, mules, jacks or jennets in said county, naming owner or owners of such animal or animals so infected, if known, if unknown so stating, it shall be the duty of such county judge, upon the filing of said affidavit, to immediately appoint three disinterested and intelligent citizens of said county, whose duty it shall be to carefully and minutely examine said animal or animals so reported to be diseased with glanders or farcy; said three citizens before entering upon the duties required of them by this chapter shall take an oath before some officer legally qualified to administer oaths, that they will discharge their duties as prescribed by this chapter in a fair and impartial manner.

County judge
to order in-
spection when
glanders, etc.,
exist.
(Acts of 1892,
S. S., P. 11,
§1.)

Art. 4932. If, after carefully and minutely examining the animal or animals so reported to be affected with glanders or farcy, said three citizens shall be of the opinion that the animal or animals so examined by them are diseased with glanders or farcy, they shall condemn the same, and it shall be their duty to appraise such animal or animals at their just and full value at the time of such examination and condemnation, and shall forthwith report their action in writing to the county judge, giving in said report the number of animals condemned, if any, the owner or owners of same if known, and if unknown so stating it, with the appraised value of same. But if the said citizens have any reasonable doubt as to the diseased animals being affected with glanders or farcy, before condemning as above provided for, they shall require the owner or owners to have said diseased animals separated from contact with all other animals subject to contagion, for a reasonable time, and when they are fully satisfied that the disease is glanders or farcy, then they shall proceed to condemn and destroy said animals as provided for in this article.

Report of
county judge:
duty of
inspector.
Ib. §2.

Art. 4933. The county judge, upon the receipt of the report named in the preceding article, shall issue his order to the sheriff or any

Condemned
animals killed.
Ib. §3.

constable of his county, commanding him to seize said diseased animal or animals and take same to some secluded place and kill them and bury or burn the carcass.

Payment for animals killed; fee, etc. Ib. \$4.

Art. 4934. After the said diseased animal or animals are killed, as provided in the preceding article, it shall be the duty of the county clerk, upon the written order of the county judge, to issue a warrant or warrants of the county, payable out of the general revenue, in favor of the owner or owners of said animal or animals so killed, for the amount of the value, as diseased, if the animal has any value, as appraised by said citizens who examined and condemned same. The sheriff or constable killing, burning or burying said animal or animals shall be paid by the county such sum as the commissioners' court thereof may determine their services worth.

Law cumulative. Ib. \$6.

Art. 4935. This law is cumulative of all other laws now in force for the prevention of glanders and farcy.

[Note.—The act of 1895 expressly repeals the act of 1891, comprised in articles 4936, 4937, 4938 and 4939. Under the first three of those numbers the new articles are here substituted.]

Bounty for killing wolves, etc. (Acts 1895, p. 20.)

Art. 4936. Hereafter when any person shall kill in this state any wolf, either cayote or lobo, panther, Mexican lion, tiger, leopard or wildcat, he may be paid in the county in which he killed such animals the sum of fifty cents for each cayote, wolf or wildcat, and one dollar for each lobo wolf, and the sum of two dollars for each panther, Mexican lion, tiger or leopard so killed.

Proof, how made. Ib.

Art. 4937. The commissioners' court of any county may order to be paid to the person or persons having killed any of said animals in their respective counties as fixed in article 4936, upon their exhibiting the scalps of the animals killed to the county judge of said county, accompanied by the written affidavit of such person, stating when and where he killed said animals and the kind of each.

Same. Ib.

Art. 4938. Such scalp shall consist of a sufficient portion of the said animal's hide, including the ears thereof, to determine whether the same has been taken from one of the above named animals; and the commissioners' court may in all cases when it is not satisfied as to the sufficiency of the evidence before it under this law reject any and all claims. The commissioners' court shall destroy all such scalps as soon as practicable.

[Note.—Article 4939 repealed. See note to article 4935.]

CHAPTER THREE.

OF THE SALE, SLAUGHTER AND SHIPMENT OF ANIMALS.

Article	Article
Bill of sale to be taken.....4940	County clerk to make a copy.....4947
Possession—prima facie without, when.....4941	Butchers' bond, etc.....4948
Stock animals sold by marks, etc.....4942	To keep a record, etc.....4949
Butchers to report, etc.....4943	Shall be open for inspection.....4950
Bill of sale, etc., to be recorded, etc.....4944	May be sued upon bond, when.....4951
Owners to file sworn lists.....4945	Inspector to keep a record, etc.....4952
Register of cattle.....4946	Exempted counties4953

Bill of sale to be always taken. (Act Nov. 13, 1866, p. 223, §1.) P. D. 7445.

Article 4940. [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. 4941. [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.

Possession prima facie illegal, without. Ib.

Art. 4942. [4564] Persons may dispose of stock animals of the kind mentioned in article 4940, 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.

Stock animals sold by mark and brand, etc. Ib.

Art. 4943. [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.

Butchers to report to commissioners' court. Ib. p. 224, §3. P. D. 6557.

Art. 4944. [4566] Any person who shall purchase animals of any class named in article 4940, 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 postoffice 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.

Bill of sale and description to be recorded before driving. Ib. pp. 223-4, §2. P. D. 6556.

Art. 4945. [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.

Owners to file sworn descriptive lists. Ib. p. 224, §2.

Art. 4946. [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.

Register of cattle shipped or slaughtered to be kept. (Act Sept. 5, 1850, p. 27, §1.) P. D. 460.

Art. 4947. [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.

Butchers' bond, etc. (Acts of 1889, p. 84.)

Art. 4948. Every person, before he shall set up and carry on the trade of a butcher or slaughterer of cattle in the state of Texas, shall file a bond, to be approved by the county judge of the county in which he desires to carry on the business, in a sum of not less than five hundred dollars nor more than five thousand dollars, payable to the state of Texas, conditioned that he shall keep a true and faithful record, in a book kept for that purpose, of all cattle purchased or slaughtered by him, with a description of the animal, including marks, brands, age, weight, and from whom purchased, and the date thereof; that he will have the hide and ears of such animal inspected by the inspector or some magistrate of the county within five days after it is slaughtered; and that he will not purchase any cattle that has been slaughtered by another unless the hide and ears of such slaughtered animal accompanies said animal offered for sale; and that he will not purchase any animal that has been slaughtered by another when the ear marks or brands on the hide accompanying such animal when offered for sale have been changed, mutilated or destroyed.

Shall keep a record, etc. Ib. §3.

Art. 4949. Every person who shall carry on the business of butcher or slaughterer of cattle shall keep a true and faithful record, in a book kept for that purpose, of all cattle purchased or slaughtered by him, together with a description of each animal, including mark, brand, age, weight and from whom purchased and the date thereof, and shall have the hide and ears of such animal or animals inspected by the inspector or some magistrate of the county within five days after such animal is slaughtered.

Shall be open to inspection. Ib. §5.

Art. 4950. The record provided for in the preceding article shall be open to inspection of all persons.

May be sued upon bond. Ib. §7.

Art. 4951. Any butcher or slaughterer of cattle who shall violate any of the conditions of the bond referred to in article 4948 may be sued upon his bond at the instance of the county or district attorney of the county where such bond is given, and all sums recovered by suits upon said bonds shall be paid into the county treasury and become a part of the available school fund of such county.

Inspector to keep a record, etc. Ib. §8.

Art. 4952. It shall be the duty of the inspector or magistrate who inspects such hides as are mentioned in this chapter to keep a record of the marks, brands, color and a general description of such hide, and for whom inspected, with the date of such inspection, and return the same to the clerk of the county court within ten days after such inspection, and shall be entitled to receive the sum of twenty-five cents for each hide so inspected, to be paid by the party having the hide inspected.

Exempted counties.

Art. 4953. The provisions of the five preceding articles shall in no wise apply to the following counties: Anderson, Bell, Gonzales, Coryell, Hamilton, Mills, Brown, Comanche, Lavaca, Llano, San Saba, Concho, Runnels, Coleman, Travis, Grayson, Cooke, Montague, Colorado, Bexar, Jasper, Newton, Orange, Jefferson, Polk, San Jacinto, Tyler, Chambers, Hardin, Liberty, Harrison, Smith, Upshur, Gregg, Wood, Rains, Bowie, Cass, Morris, Titus, Lee, Bastrop, Fayette, Hill, Johnson, Ellis, McLennan, Falls, Robertson, Milam, Brazos, Galveston, Brazoria, Matagorda, San Patricio, Guadalupe, Caldwell, Hays, Blanco, Comal, Tarrant, Wise, Parker, Jack, Dallas, Nacogdoches, San Augustine, Sabine, Shelby, Panola, Rusk, Hunt, Hopkins, Delta, Franklin, Camp, Angelina, Houston, Leon, Grimes, Madison, Kaufman, Rockwall, Fannin, Lamar, Red River, Van Zandt, Henderson, Cherokee, Bosque, Hood, Erath, Somervell, Collin, Den-

ton, Trinity, Walker, Montgomery, Harris, Austin, Washington, Wharton, Fort Bend, Waller, Burleson, Limestone, Freestone, Navarro, Young, Karnes, Mason, Medina, Kimble, Kerr, Kendall, Bander, Sutton, Gillespie, Williamson, Lampasas, Burnet, El Paso, Presidio, Brewster, Midland, Reeves, Marion.

CHAPTER FOUR.

OF ESTRAYS.

Article	Article
Who may take up stray animals.....4954	Sale, when to be made.....4966
Oath, appraisement and bond.....4955	Hogs, sheep, etc., how estrayed.....4967
Ownership, how proved.....4956	Not to be estrayed until.....4968
Proof of respectability, when.....4957	Names of bidders to be given.....4969
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County clerk to record papers, etc.....4961	Proceeds of sale, how disposed of.....4973
Two or more animals to be in one entry.....4962	If taker up refuses to deliver, liable for damages.....4974
Clerk to advertise.....4963	When owner may reclaim money.....4975
Property in estrays, etc.....4964	Notice to be sent by county clerk, when.....4976
Return of sale.....4965	Penalty for failure to send such notices.....4977

Article 4954. [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 stray the same.

Who may take up stray animal, etc.
(Act Oct. 26, 1866, p. 54.)
P. D. 6810.

Art. 4955. [4571] Any citizen entitled to stray any animal, as provided in the preceding article, shall make oath that the animal which he proposes to stray 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 appraisement 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, appraisement and bond.
(Act Oct. 26, 1866.)
P. D. 6811.

Ownership,
how proven,
etc.
Ib.
P. D. 6812.

Art. 4956. [4572] At any time within twelve months, and before the sale of any estrays, it shall be lawful for the owner of any estray 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 subscribed 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 estray or estrays, to the taker-up, such owner shall be entitled to demand and receive the animal.

Proof of respectability,
when
required.
Ib.

Art. 4957. [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 estray 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 such witness resides.

When taker-up
not entitled to
compensation.
Ib.

Art. 4958. [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. 4959. [4575] Any animal taken up as an estray 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 4955.

When county
commissioner
to return
estrays.
Ib.
P. D. 6813.

Art. 4960. [4576] If any estray 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. 4961. [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. 4962. [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 ad-
vertise, etc.
Ib.

Art. 4963. [4579] The clerk of the county court shall cause a statement of the appraisement and a description of the animals 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.

Art. 4964. [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 stray 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 sheriff's 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.

Property in
estrays, etc.,
sales, etc.
Ib.
P. D. 6815.

Art. 4965. [4581] Whenever a sale of an stray 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. 4966. [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. 4967. [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 appraisement, 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. 4968. [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 stray for at least twelve months previous to the time of estraying the same.

Not to be
estrayed until
after twelve
months.
Ib.

Art. 4969. [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. 4970. [4586] If any person estraying an 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 dis-

Taker-up
liable for
damages,
when.
Ib.
P. D. 6818.

pcse 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 may use, when.

Art. 4971. [4587] The taker-up of an estray may use the same in moderation, after having executed bond as provided in article 4955, 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.

Death, etc., of estray to be reported.

Ib.
P. D. 6319.
P. C. 188.

Art. 4972. [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.

Proceeds of sale, how disposed of.

Ib.
P. D. 6320.

Art. 4973. [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.

If taker-up refuse to deliver liable for damages.

Ib.
P. D. 6321.

Art. 4974. [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.

Owner mayre-claim money in twelve months.

Ib.
P. D. 6322.

Art. 4975. [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.

County clerk to send notice of estray, etc. (Acts of 1883, p. 76, §5.)

Art. 4976. Whenever any person shall estray any animal on which any county brand may be found, it shall be the duty of the county clerk of the county in which said estray may be to immediately send a notice containing a full description of said animal, together with the marks and brands, to the county clerk of the county to which the county brand may belong, and it shall be the duty of the county clerk of said county brand to record said notice in a book kept for that purpose, and post the same on the court house door; and it shall further be his duty to ascertain from his record of brands to whom said animal may belong, and to notify said owner by letter or otherwise, and for such services he shall be entitled to a fee of one dollar from said owner, and the county clerk furnishing the notice shall be entitled to a fee of one dollar from said owner.

Liability for failure.
Ib. §6.

Art. 4977. Any county clerk who shall fail to send a notice as required in article 4976 of this chapter, the county clerk so failing shall become liable to the original owner of said estray in an amount equal to the value of said estray.

CHAPTER FIVE.

OF THE MODE OF PREVENTING CERTAIN ANIMALS FROM
RUNNING AT LARGE IN COUNTIES AND SUBDIVISIONS.

Article	Article
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Returns, how opened.....4989	
Proclamation of result, etc.....4990	

Article 4978. [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.

County judge to order election.
(Const. art. 16, §22.)
(Act Aug. 15, 1876, p. 150, §1.)

Art. 4979. Whenever there is territory between two subdivisions of a county which have adopted the stock law, and in such intervening territory there is less than fifty freeholders, an election shall be ordered on the petition of a majority of the freeholders residing in such intervening territory, and the election shall be held as provided by law in other cases relating to the adoption of the stock law.

Election may be ordered in subdivisions, when.
(Acts of 1881, p. 110.)

Art. 4980. [4593] Such petition shall set forth clearly the class or classes of animals enumerated in the preceding articles 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.

Requisites of petition.
(Acts of 1876, p. 150.)

Art. 4981. [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.

Election, how ordered and conducted.
Ib.

Art. 4982. [4595] Immediately after the passage of an order for an 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; 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.

Notice, how given.
Ib.

- Requisites of the order. **Art. 4983. [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. **Art. 4984. [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.
- Managers to be appointed, when. **Art. 4985. [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.
Ib. pp. 150-1, §4.
- Freeholders only to vote. **Art. 4986. [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.
(Const., art. 16, §23.)
 Ib. p. 150, §2.
- Manner of voting. **Art. 4987. [4600]** All votes at any election in pursuance of this chapter shall be by ballot; and voters desiring to prevent the animal 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."
Ib. §3.
- Returns of election. **Art. 4988. [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.
Ib. p. 151, §4.
- Returns, how opened. **Art. 4989. [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.
Ib. §4.
- Proclamation of the result, and its effect. **Art. 4990. [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.
Ib.
- Stock may be impounded, when. **Art. 4991. [4604]** If any stock forbidden to run at large shall enter the inclosed lands, or shall, without being herded, roam about the residence, lots or cultivated land 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.
(Acts of 1887, p. 56.)
- Not to be impounded, when. **Art. 4992. [4605]** No animals shall be impounded unless they have entered upon the inclosed lands or be found roaming about the residence, lots or cultivated land of another, and whenever any stock is impounded notice thereof shall at once be given to the owner, if

known, and such owner shall be entitled to their possession upon payment of fees and damages.

Art. 4993. [4606] Any owner, lessee, or person in lawful possession of enclosed 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, and the fees due to the taker-up of stock, if any, may be assessed by any three disinterested freeholders of the subdivision in which said stock is taken up, who shall upon the application of the taker-up of the stock be appointed by the justice of the peace of the precinct in which such subdivision is situated. Where said justice shall fail or refuse to make appointment, or where the stock law has been adopted by an entire county, said freeholders shall be appointed by the county judge of the county. Said freeholders after being duly sworn to discharge with impartiality the duties devolving upon them by said appointment, shall proceed after hearing the evidence to determine whether or not any trespass prohibited by the provisions of this chapter has been committed, and to ascertain the damages, if any, occasioned thereby, and the fees due to the taker-up of the stock by reason of said trespass, and shall make an assessment of damages and fees, in writing, and signed by said freeholders, or two of them, and verified by the affidavit of said freeholders, to the effect that said assessment is just and that they have no bias in favor of or prejudice against any party interested therein, and shall file said assessment with the justice of the peace, which shall be final; provided, that the owner of the stock, if known, shall have five days' notice of the time and place of the meeting of said freeholders, and if the owner is unknown then a written notice thereof shall be posted in two public places in said subdivision and one at the door of the court house of the county; and provided further, that nothing in this chapter shall be construed to deprive the taker-up of the stock to enforce by suit in a court of competent jurisdiction any claim he may have for such fees and damages, and to subject the stock so taken for the payment of the same under the provisions of this chapter.

Art. 4994. [4607] After the filing of the assessment, as provided for in the preceding article, the constable of the precinct shall 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 the expenses thereof, to the satisfaction of said fees and damages, and shall pay the balance, if any remains, to the owner of such stock. The justices and constables shall receive for their services the same compensation as is allowed for like services in civil cases.

Art. 4995. [4608] If no owner can be found of stock so impounded, the taker-up may make affidavit before a justice of the peace of the county, describing the stock impounded by him, and that the owner is unknown to affiant, which affidavit shall be forthwith delivered to the county clerk by such justice, to be kept in his office for inspection. After the filing of such assessment, the constable of the precinct shall sell such stock as in case where the owner is known, and if anything remains after satisfying the expenses of said sale and the fees and damages due to the taker-up, he shall report the same under oath to the clerk of the county court, and pay the same over to the county treasurer, to be received and disbursed by him as in case of sales of estrays, or the taker-up may at his

Fees and
damages.
(Amend. 1895,
p. 84.)

Stock may be
sold, when,
etc.
Ib.

May be sold,
when and
how.
Ib.

option, after the expiration of five days, estray such stock, according to the laws regulating estrays in this state.

Lawful fence.
(Acts of 1876,
p. 150, §5.)

Art. 4996. [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. 4997. [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.

May be im-
pounded when
fence law in
force.
(Acts of 1879,
p. 66, §6.)

Art. 4998. 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 chapter 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 expenses incurred in impounding and keeping said stock; provided, that in such county or subdivision said owners or lessees shall not be required to fence against the stock not permitted to run at large; and any fence in said county or subdivision which is sufficient to keep out ordinary stock permitted to run at large under this chapter shall be deemed a lawful fence. Three barbed wires or two strands of barbed wire, or pickets four and one-half feet high and not more than six inches apart, shall constitute a lawful fence. If boards or rails are used then three boards, to be not less than five inches wide and one inch thick, or four rails, shall constitute a lawful fence; provided, that if wires only are used, the owner of the fence shall be required to fasten a board not less than four inches wide and one-half inch thick between the wires; provided further, that all fencing built under the provisions of this act shall be four and one-half feet high.

Lawful fence.

Stock not to
be injured,
etc.
Ib. §9.

Art. 4999. If any person whose fence is insufficient under this law, shall, with guns, dogs or otherwise, maim, wound or kill any cattle or any horse, mule, jack or jennet, or procure the same to be done, such person or persons so offending shall give full satisfaction to the party injured for all damages by such person or persons sustained, to be recovered as in other suits for damages; provided, that this article shall not be so construed as to authorize any person in any event to maim, kill or wound any horse, mule, jack, jennet or cattle belonging to another. When a trespass has been committed by any cattle or horses on the cleared or cultivated land of any person who has complied with the provisions of this chapter, in the erection of a lawful fence, it shall be lawful for such person to complain thereof to the justice of the peace of the precinct in which such trespass shall have been committed, and such justice is hereby authorized and required to cause two disinterested and impartial freeholders to be summoned, who shall on oath view and examine whether such complaint be sufficient or not, and what damages he

has sustained by said trespass, and certify the same in writing; and if it shall so appear that said fence be sufficient, then the owner of such cattle or horses shall make just satisfaction for the trespass to the party injured, to be recovered before any tribunal having proper jurisdiction. In case of a second trespass by the same cattle or horses, the owner or lessee of the premises upon which the trespass is committed may, if he deem it necessary for the protection and preservation of his premises or growing crops thereon, cause said 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 thereof. It shall be lawful for the owner or lessee of such inclosures as are contemplated in this chapter to charge the following rates for impounding such stock as referred to in this chapter, to-wit, twenty-five cents per day per head.

Art. 5000. Nothing in this chapter shall prevent the freeholders of any county or subdivision of a county where the stock law prevails from deciding by a majority vote whether or not three barbed wires without a board or plank shall constitute a lawful fence in such county or subdivision of same. The election for such purpose to be conducted in the same manner and under the same rules and regulations as elections provided for in the act authorizing the passage of stock and fence laws, approved August 15, 1876.

Lawful fence may be determined by election.

Art. 5001. The counties of Cook, Refugio, Aransas, San Patricio and Bee are exempted from the provisions of this chapter.

Exempted counties.

CHAPTER SIX.

REGULATIONS FOR THE PROTECTION OF STOCK RAISERS IN CERTAIN LOCALITIES.

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Fees, how paid.....5023d	

Article 5002. [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.

Inspector to be elected. (Const., art. 16, §23.) (Act Aug. 23, 1876, p. 285, §1.)

Governor may
appoint in
unorganized
county.
(Acts of 1879,
p. 89.)

Art. 5003. The governor is authorized to appoint a hide inspector for each unorganized county in this state.

Term of office.
(Act Aug. 23,
1876, p. 295, §2.)

Art. 5004. [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.

Vacancies,
how filled.
(Act Aug. 19,
1876, p. 217, §1.)

Art. 5005. [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.

Bond and
oath.
Ib. §3.

Art. 5006. [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.

Appointees
also to give
bond.
(Act Aug. 19,
1876, p. 217, §1.)

Art. 5007. [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.

Seal of office.
(Act Aug. 23,
1876, p. 296, §6.)

Art. 5008. [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.

Deputies may
be appointed.
Ib. p. 295, §4.

Art. 5009. [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 inspectors 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.

Appointment
to be recorded.
Ib. pp. 295-6,
§5.

Art. 5010. [4618] The appointment of each deputy shall be in writing, with the seal of the inspector thereon, and shall, with their

bonds and oath of office, be recorded by the clerk of the county court of the county constituting their district, and the inspectors 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.

Art. 5011. [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.

Meaning of terms.
Ib. p. 301, §27.

Art. 5012. [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.

May authenticate instruments.
Ib. p. 302, §30.

Art. 5013. [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.

Inspections and record thereof.
Ib. p. 296, §7.

Art. 5014. [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.

Monthly returns to county clerk.
Ib.

Art. 5015. [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.

Exemptions from inspection.
Ib.

Art. 5016. [4624] No inspector shall grant any certificate of inspection of any unbranded hides or animals, or of hides or animals upon which the marks and 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.

Shall not certify unbranded animals, etc.
Ib. §8.

Art. 5017. [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.

May seize certain animals, etc.
Ib. §9.

Also unbranded hides and animals.
Ib. §10.

Art. 5018. [4626] Every inspector shall have power to, and may seize and sequester all unbranded animals or hides, and animals and 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 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. 5019. [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.

Bill of sale to be taken.
Ib. p. 297, §11.

Art. 5020. [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.

Also in sale of hides.
Ib. §12.

Art. 5021. [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.

Certificate of inspection to be given.
Ib. §13.

Art. 5022. [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 from the county from which the same may be exported.

Art. 5023. [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 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.

Same subject.
Ib. §14;
amend. 1895,
Sen. Jour., No.
101a, p. 484.

Art. 5023a. [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.

Road brand.
(Acts of 1876,
p. 295; Sen.
Jour., 1895, p.
484.)

Art. 5023b. [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.

Exportation
of cattle to
Mexico.
Ib.

Art. 5023c. [4634] Whenever a drove of cattle may be passing through any county it shall be the duty of the inspector, if called upon to do so 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 such cattle as are prescribed in articles 5013, 5017 and 5018.

Herds in trans-
it may be
inspected.
Ib.

Art. 5023d. [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

Fees, how paid.
Ib.; Sen.
Jour., 1895, p.
485.

certificate, then the inspector's fees shall be paid by the person at whose instance and request said drove was inspected.

Hides import-
ed from
Mexico.
Ib.

Art. 5023e. [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 required 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 in connection therewith.

Horses and
mules.
Ib.

Art. 5023f. [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 the inspection fees.

Suspicious
hides to be
seized.
Ib.

Art. 5023g. [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.

Art. 5023h. [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.

Importer to
recover on
proof.
Ib.

Art. 5024. [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 or 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.

Hides to be
sold, if not
proven away.
Ib.

Art. 5025. [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.

Fees of in-
spector in such
cases.
Ib.

Art. 5026. [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.

Art. 5027. [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. 5028. [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 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.
Ib. p. 300, §23.

Art. 5029. [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 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.

Same brand, etc., not to be recorded twice, etc.
Ib. §24.

Art. 5030. [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 is a sale. It is made the duty of the inspector to

In the county where cattle range.
Ib. p. 301, §23.

procure certified copies of the marks and brands of this 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. 5031. [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 of his or their legally constituted agent, shall be sufficient evidence of such purchase, but the increase of such animals, or of any animal counterbranded by such person from other stocks of cattle owned by him, shall be branded or counterbranded 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. 5032. [4648] In all cases where the counterbranding of any cattle shall be deemed necessary or expedient, the person so counterbranding shall counterbrand 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 facsimile, 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 counterbranding shall leave the ears bearing the same mark or marks as before counterbranding.

Authority to
gather, etc.
Ib. p. 209, §20.

Art. 5033. [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. 5034. [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. 5035. [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. 5036. [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 5023d 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 of 1879, extra session ch. 22.)

Art. 5037. [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. 5038. [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 5017.

Seizure of cattle not inspected originally.
Ib.

Art. 5039. [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. 5040. [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. 5041. [4657] At the time such proceeds are originally deposited in the county treasury the inspector shall accompany such deposit with a certified statement, under his hand and seal, of the

Description, etc., of cattle also filed.
Ib.

number of cattle sold, the mark and brand of each animal, the amount for which each sold.

Change of
destination.
Ib.

Art. 5042. [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
exempted.

Art. 5043. The provisions of this chapter shall not apply to the following counties, viz.: Anderson, Austin, Angelina, Bell, Bowie, Brazos, Bastrop, Bosque, Burleson, Brazoria, Caldwell, Camp, Calhoun, Cass, Chambers, Cherokee, Collin, Colorado, Cooke, Dallas, Delta, Denton, Ellis, Erath, Fannin, Franklin, Falls, Freestone, Gonzales, Eastland, Stephens, Fayette, Fort Bend, Galveston, Goliad, Grayson, Gregg, Grimes, Hardin, Harrison, Hays, Henderson, Hill, Hood, Hunt, Hopkins, Houston, Jackson, DeWitt, Jasper, Jefferson, Johnson, Kaufman, Lamar, Lee, Leon, Lampasas, McLennan, Madison, Marion, Montgomery, Montague, Morris, Nacogdoches, Newton, Orange, Panola, Parker, Polk, Palo Pinto, Rains, Red River, Robertson, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, Shackelford, Shelby, Smith, Tarrant, Titus, Trinity, Tyler, Upshur, Van Zandt, Walker, Washington, Wharton, Wise, Wood, Jack, Harris, Chambers, Clay, Young, Wheeler, Lavaca, Neuces, Bee, Refugio, Limestone, San Patricio, Somervell, Matagorda, Waller, Karnes, Victoria, Milam, Live Oak, Williamson, Liberty, Wilbarger, Archer, Hardeman, Childress, Hall, Collingsworth, Donley, Gray, Armstrong, Briscoe, Floyd, Randall, Kendall, Comal, Travis, Navarro, Brown, Coryell, Mills, Bailey, Deaf Smith, Dallam, Oldham, Hartley, Hockley, Cochran, Ford and Wichita, and the provisions of this chapter shall in no wise relate or apply to the aforesaid counties; provided, that in those counties bordering on the line of the state, except those bordering on Red River, and the Rio Grande, where there is a depot or place for the shipment of cattle, no inspector of hides and animals shall be elected, but one for each of such counties shall be appointed by the governor, who shall hold office for two years, and until his successor shall be appointed, and said inspector, so appointed, shall take the constitutional oath of office and give the bond now required of inspectors of hides and animals, and such inspector shall receive the same fees now allowed to inspectors of hides and animals, and perform the same duties; provided, that such cattle shall not be subject to inspection on board of any railroad unless the same have been placed on board of such train for the purpose of evading the provisions of this act; and provided further, that the counties of Guadalupe, Blanco, Llano, Kendall and Hamilton shall be exempt from all laws regulating the inspection of hides.

CHAPTER SEVEN.

LIVE STOCK SANITARY COMMISSION.

Article	Article
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Qualifications of commissioners.....5043b	Appropriation for purposes of this chap- ter5043j
Duties and powers of commission.....5043c	Quarantine line5043k
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Commission to purchase supplies.....5043e	Law cumulative5043m
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Article 5043a. There shall be appointed by the governor, and with the consent of the senate, a live stock sanitary commission of the state of Texas, composed of three members. Before entering upon the duties of their office said commissioners shall take and subscribe to the usual oath of office and file the same with the secretary of state; and they shall also, before entering upon the performance of their duties, execute a bond, to be approved by the state comptroller, in the sum of ten thousand dollars each, conditioned that they will faithfully perform the duties of their office, which said bond they shall file with the secretary of state. The term of office of said commissioners shall be for a period of two years next from the day of their qualification, and until their successors shall have been appointed and qualified.

Commission created; oath, bond and term of office. (Acts of 1893, p. 70.)

Art. 5043b. The commissioners, whose appointment is provided for in the preceding article, shall each be practical live stock raisers in the state of Texas, and shall have been actively engaged in said business for at least five years next preceding the date of their appointment, and shall be bona fide residents of and stock raisers in the particular section of the state from which they may be appointed. One of said commissioners shall be appointed from the west, one from the south, and one from the eastern portion of said state.

Qualifications of commis- sioners. Ib.

Art. 5043c. It shall be the duty of the commission provided for in article 5043a to protect the domestic animals of this state from all contagious or infectious diseases of a malignant character, whether said diseases exist in Texas or elsewhere; and for this purpose they are hereby authorized and empowered to establish, maintain, and enforce such quarantine lines and sanitary rules and regulations as they may deem necessary. It shall also be the duty of said commission to co-operate with live stock quarantine commissioners and officers of other states and territories, and with the United States secretary of agriculture, in establishing such interstate quarantine lines, rules, and regulations as shall best protect the live stock industry of this state against Texas or splenetic fever. It shall be the duty of said commission, upon receipt by them of reliable information of the existence among the domestic animals of the state of any malignant disease, to go at once to the place where any such disease is alleged to exist, and make a careful examination of the animals believed to be affected with any such disease, and ascertain, if possible, what, if any, disease exists among the live stock reported to be affected, and whether the same is contagious or infectious, and if said disease is found to be of a malignant, contagious or infectious character, they shall direct and enforce such quarantine lines and sanitary regulations as are necessary to prevent the spread

Duties and powers of the commission. Ib.

of any such disease. And no domestic animal infected with disease, or capable of communicating the same, shall be permitted to enter or leave the district, premises, or grounds so quarantined, except by authority of the commissioners. The said commission shall also, from time to time, give and enforce such directions and prescribe such rules and regulations as to separating, feeding, and caring for such diseased and exposed animals as they shall deem necessary to prevent the animals so affected with such disease from coming in contact with other animals not so affected. And the said commissioners are hereby authorized and empowered to enter upon any grounds or premises to carry out the provisions of this act.

When the governor shall proclaim quarantine.
Ib.

Art. 5043d. When the commission shall have determined the quarantine lines and other regulations necessary to prevent the spread among domestic animals of Texas of any malignant, contagious, or infectious disease found to exist among the live stock of this state, or elsewhere, and given their orders as hereinbefore provided, prescribing quarantine and other regulations, they shall notify the governor of the state of Texas, who shall issue his proclamation, proclaiming the boundary of such quarantine around such diseased stock, and the orders, rules, and regulations prescribed by the commission; and such commission shall give such notice as may to them seem best to make the quarantine established by them effective.

Commission to purchase supplies, etc.
Ib.

Art. 5043e. The commission provided for in this chapter shall have power to purchase such supplies and material as may be necessary to carry into full effect all orders by them given, as hereinbefore provided, which said supplies and material and wages, and expenses of the veterinarian hereinafter provided for, shall be paid out of the moneys hereinafter appropriated, on the warrant of the comptroller, issued to said commissioners, upon their filing with the comptroller an itemized account thereof, properly verified by affidavit; provided, that no material or supplies may be purchased by the commissioners except such as may be necessary to carry into effect the quarantine and other regulations prescribed by them. And such commissioners shall have the power to employ a competent veterinarian to assist them in the investigation of the diseases amongst the live stock of this state whenever they may deem the services of one necessary; provided, that the compensation of such veterinarian shall not exceed the sum of ten dollars per day and actual expenses while so employed; and provided further, that the expenditures for the compensation of veterinarians shall not exceed nine hundred dollars in any one year.

Railways to keep clean transporting cars.
Ib.

Art. 5043f. It shall be the duty of the railway corporations doing business in the state to cleanse and disinfect the cars used by them in transporting live stock in or through this state, at such times and places as the commissioners may designate, whenever, in the opinion of the commissioners, any such order may be necessary to prevent the spread of infectious or contagious disease. And such corporations violating the provisions of this article shall be liable to a penalty of five hundred dollars for each offense, to be recovered in a civil action, to be prosecuted under the direction of the attorney-general in the name of the state of Texas.

Knowledge or suspicion of infection to be reported.

Art. 5043g. It shall be the duty of any owner or person in charge of any domestic animal or animals, who discovers, suspects or has reason to believe that any of his domestic animals, or domestic animals in his charge, are affected with any contagious or infectious disease, to immediately report such fact, belief, or suspicion to the

commission and to the sheriff and county clerk of the county in which said domestic animals are found.

Art. 5043h. The commissioners appointed by the governor, as hereinbefore provided, shall receive five dollars per day for the time by them necessarily employed in the discharge of the duties required by this chapter; and said commissioners, hereinbefore provided for, shall receive in addition thereto the actual and necessary traveling expenses incurred by them and paid in the discharge of the duties required of them by the provisions of this chapter; which said per diem and expenses shall be drawn from the treasury on the warrant of the comptroller, to be issued to said commissioners on their filing with the comptroller an itemized account thereof, properly verified by affidavit.

Compensation of commissioners.

Art. 5043i. The live stock sanitary commission shall have power to call upon any sheriff, deputy sheriff or constable to execute their orders, and such officers shall obey the orders of said commissioners; and the officer or officers performing these duties shall each be entitled to two dollars and fifty cents per day for himself and horse, which payment shall be made upon a sworn account, approved by said commissioners; provided, said expenses under this article shall not exceed in any event five hundred dollars per annum.

Sheriffs and constables subject to orders of commissioners.
Ib.

Art. 5043j. The sum of twenty thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of the general revenue fund not otherwise appropriated, for the purpose of carrying into effect the provisions of this chapter; provided, that the exhaustion of the appropriation herein made shall terminate the liability of the state for the two years next following, and absolve it from any future claims of any and all persons who may have claims, real or pretended, under the provisions of this chapter.

Appropriation for purposes of this chapter.
Ib.

Art. 5043k. Any quarantine line that may be fixed by the live stock sanitary commission, against Texas or splenic fever, shall be so fixed as to conform to the Federal quarantine line established, or that may be established, by the United States department of agriculture; provided, however, that as to the shipment or movement of live stock within the limits of the state, such quarantine lines, and the regulations in relation thereto, shall not apply from the first day of November to the fifteenth day of May of each year; provided, the quarantine line now recognized and established by Federal authority within the state of Texas shall not be changed prior to December 1, 1893, but said line as is now established shall remain in full force until said date.

Quarantine line.

Art. 5043l. No quarantine line shall be established at any time, nor regulations made in relation thereto, unless two of the live stock sanitary commissioners agree thereto.

Concurrence of two commissions, etc.

Art. 5043m. This chapter does not repeal any law in force for the protection of domestic animals, but is cumulative thereto.

Cumulative law.

TITLE CIII.

Stolen Property.

	Article		Article
Treble value of stolen property recoverable, when	5044	Criminal prosecution not affected by this title	5045

Treble value of stolen property recoverable, when. (Act June 22, 1876, p. 26.)

Article 5044. [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 liable to the true owner thereof in three times the value of the same, to be recovered in any court having jurisdiction of the case.

Criminal prosecution not affected by this title.

Art. 5045. [4661] Nothing in this title shall be so construed as to relieve any person so offending from prosecution under the criminal laws.

TITLE CIV.

Taxation.

CHAPTER ONE.

OF THE LEVY OF TAXES AND PAYMENT OF OCCUPATION TAXES.

	Article		Article
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For schools	5047	lector	5055
Poll tax	5048	Transfer of license.....	5056
Occupation taxes	5049	Purchaser of unexpired license may pur-	
County ad valorem tax.....	5050	sue occupation, when.....	5057
Taxes payable only in money.....	5051	Duties of revenue agent.....	5053
Collector to keep a book, etc.....	5052	Shall have access to books.....	5059
Collector to be furnished book.....	5053	Compensation	5060
Tax to be paid before occupation begun.....	5054		

Article 5046. There shall be levied and collected for the year 1895 an ad valorem tax of twenty-five cents, and annually thereafter an ad valorem tax of twenty cents on the one hundred dollars cash value thereof, estimated in lawful currency of the United States, on all real property situated and on all property owned in the state on the first day of January in each and every year, and on all property sent out of the state prior to the first day of January for the purpose of evading the payment of taxes thereon, and afterwards returned to the state, except so much thereof as may be exempted by the constitution and laws of this state or the United States, which cash value shall be estimated in the manner prescribed by law.

Ad valorem
tax for gen-
eral purposes.
(Acts of 1895,
p. 116.)

Art. 5047. [4662] There shall be levied and collected an annual ad valorem state school tax of twenty cents for the year 1895, and of eighteen cents for the years thereafter, on the one hundred dollars of the cash value thereof, estimated in lawful currency of the United States, on all real property situated and on all personal property owned in the state on the first day of January of each year, and all personal property sent out of the state for the purpose of avoiding the payment of taxes thereon and afterwards returned to the state, except so much thereof as may be exempted by the constitution and laws of this state or the United States, which cash value shall be estimated in the manner prescribed by law.

For schools.
(Acts of 1895,
p. 95.)

Art. 5048. [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, deaf and dumb or those who have lost one hand or foot, excepted), an annual poll tax of one dollar and fifty cents, one dollar for the benefit of free schools, and fifty cents for general revenue purposes; provided, that no county shall levy more than twenty-five cents poll tax for county purposes.

Poll tax.
(Acts of 1882,
p. 18.)

Occupation
taxes.
(Acts of 1889,
p. 27, et seq.)

Art. 5049. [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 occupation tax, except when herein otherwise provided, on every such occupation or separate establishment, as follows:

Merchants,
etc.

From every merchant whose annual purchases amount to ten hundred thousand dollars, three hundred dollars; from every merchant whose annual purchases amount to seven hundred and fifty thousand dollars, two hundred and fifty dollars; from every merchant whose annual purchases amount to five hundred thousand dollars, two hundred dollars; from every merchant whose annual purchases amount to two hundred and fifty thousand dollars, one hundred and fifty dollars; from every merchant whose annual purchases amount to one hundred thousand dollars, one hundred and twenty-five dollars; from every merchant whose annual purchases amount to fifty thousand dollars, sixty dollars; from every merchant whose annual purchases amount to twenty-five thousand dollars, twenty-five dollars; from every merchant whose annual purchases amount to fifteen thousand dollars, twenty dollars; from every merchant whose annual purchases amount to ten thousand dollars, twelve dollars; from every merchant whose annual purchases amount to five thousand dollars, six dollars; from every merchant whose annual purchases amount to two thousand dollars or less, three dollars. A merchant in the meaning of this article is any person, firm or association of persons engaged in buying and selling lumber and shingles, goods, wares and merchandise of any kind whatever.

Affidavit.
(Act of 1895,
p. 18.)

Every person, firm, corporation or association of persons, desiring to sell goods, wares or merchandise within this state, shall, before pursuing such occupation, pay the tax and take out a license to pursue the occupation of a merchant of the class to which he properly belongs, according to his annual purchases, as provided by law; and shall file with the tax collector an affidavit of the amount of his annual purchases for the past year, if previously engaged in such business, or part of a year if engaged in such business less than a year, and also of the estimated amount of his annual purchases for the ensuing year. Said affidavit shall be filed and preserved by the tax collector as a part of the records of his office, and shall be in substance as follows, viz.:

“The undersigned, as the representative of ———, doing business at ———, Texas, do solemnly swear that the estimate made of the annual purchases of said concern of goods, wares and merchandise for the next ensuing year does not exceed ——— thousand dollars. I further swear that the annual purchases of said concern for the past ——— months did not exceed the sum of ——— thousand dollars.”

Said affidavit shall be signed and sworn to before some officer authorized to administer oaths, and for this purpose the tax collectors of counties, cities, and towns are hereby authorized to administer oaths.

Patent medi-
cine vendors.

From every traveling person selling patent or other medicine, one hundred and seventy-five dollars, and no traveling person shall so sell until said tax is paid; provided, that this tax shall not apply to commercial travelers, drummers or salesmen making sales or soliciting trade for merchants engaged in selling drugs or medicines by wholesale.

From every fortune teller, one thousand dollars; from every clairvoyant or mesmerist who plies his or her vocation for money, fifty dollars for each and every county in which such vocation is carried on.

Fortune tellers, etc.

From every person, firm or association of persons engaged in discounting and shaving paper, or engaged in business as money brokers or bankers, or dealers in stocks, securities or bills of exchange, or in buying and selling bonds, state or county warrants or other claims against the state, an annual tax of twenty-five dollars in a city or town of not more than two thousand inhabitants; in a city or town of five thousand inhabitants and not less than two thousand, an annual tax of sixty dollars; in a city or town of ten thousand and not less than five thousand inhabitants, an annual tax of one hundred and twenty dollars; in a city or town of twenty thousand and not less than ten thousand inhabitants, an annual tax of one hundred and eighty dollars; in a city or town of more than twenty thousand inhabitants, an annual tax of two hundred and forty dollars.

Money brokers.

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, six dollars; if more than five thousand inhabitants, fourteen dollars; and if elsewhere, four dollars; and from every person soliciting work for any daguerrean, photograph or such like gallery, or for persons engaged in the business of copying or enlarging pictures or photographs of any character, where such gallery is not situated in or such business is not in the county in which he solicits such work, seven dollars.

Photographers, etc.

From every auctioneer doing business in a city of ten thousand inhabitants or more, an annual tax of forty dollars; from every auctioneer in a city or town of five thousand and not more than ten thousand inhabitants, twenty-five dollars; from every auctioneer in a city or town of two thousand inhabitants and not more than five thousand, ten dollars; from auctioneers in all other towns or villages, seven dollars.

Auctioneers.

From every keeper of a toll bridge, an annual tax of seven dollars.

Toll bridge keepers.

From every person, firm or association of persons following the occupation of ship brokers or ship agents, if in a city or town of ten thousand inhabitants or more, fifty dollars; if in a city or town of less than ten thousand inhabitants, ten dollars.

Ship brokers, etc.

From every person, firm or association of persons selling upon commission, an annual tax of seven dollars.

Commission merchants.

From every land agent there shall be collected an annual tax of five 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. But this term "land agent" shall not be so construed as to levy a tax upon attorney in addition to the one hereinafter levied.

Land agents.

From every person practicing law, and from every conveyancer or other person drawing deeds or other legal instruments for pay, five dollars; provided, that attorneys at law shall only pay county occupation tax in the county of his or their residence.

Lawyers.

From every physician, surgeon, oculist or medical or other 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; from every dentist, five dollars.

Physicians, etc.

- Shooting gallery.** From every person or firm keeping a shooting gallery at which a fee is paid or demanded, an annual tax of twenty-five dollars in each county.
- Ring devices, etc.** From every person or firm keeping a knife, cane or doll rack, or any other device upon which rings are pitched, or at which balls are thrown, an annual tax of one hundred dollars.
- Billiard tables, etc.** From every billiard, bagatelle, pigeon-hole, devil-among-the-tailors, or jenny-lind table, and pool table, or anything of the kind, used for profit, twenty dollars; and any such table used in connection with any drinking saloon or other place of business where intoxicating liquors, cigars, or other things of value are sold or given away, or upon which any money or any other thing of value is paid, shall be regarded as used for profit.
- Obscene literature.** From every person, firm, or association of persons selling or offering for sale the Illustrated Police News, Police Gazette, Sporting World, or other illustrated publications of like character, the sum of five hundred dollars in each county in which sale may be made or offered to be made.
- Pool sellers.** From any person or persons who shall sell pools on horse races or other contests, five dollars for each and every day they may so sell said pools.
- Ten pin alley.** For every nine or ten pin alley, or any other alley used for profit by whatever name called, constructed or operated upon the principle of a bowling alley, and upon which balls, rings, or other devices used as substitutes thereof are rolled, without regard to the number of pins used, or whether pins are used or not, or whether the balls, rings, or other devices are rolled by hand or with a cue or any other device, one thousand dollars. Any such alley used in connection with any drinking saloon or any drug store, or with any drug store where intoxicating liquors are sold or given away, or upon which any money or thing of value is paid, shall be regarded as used for profit.
- Hobby horses, etc.** From all persons keeping or using for profit any hobby horse or flying-jenny, or device of that character with or without name, sixteen dollars for each county wherein the same are kept or used.
- Foot peddlers.** From every foot peddler, five dollars in each county in which he peddles; for every peddler with one horse or one pair of oxen, the sum of fifteen dollars in each county where he peddles; for every peddler with two horses or two pairs of oxen, thirty dollars in each county in which he may pursue such occupation; for every peddler with sail or other boat, in the streams or along the coast or bays of this state, thirty dollars in each county in which he may pursue such occupation; provided, any blind, deaf and dumb, or any wounded person who has lost a hand or a foot, shall not be required to pay any tax for peddling; provided, such persons shall not be exempt from said peddlers' tax if in the employ of another person or persons; nothing herein contained shall be so construed as to include traveling vendors of tin or earthen ware; provided further, that nothing herein contained shall be so construed as to include traveling vendors of literature exclusively religious in character, or traveling vendors of vegetables, poultry, or other country produce exclusively, fruit and fruit trees exclusively.
- Theaters.** For every theater or dramatic representation from which pay for admission is demanded or received, two dollars for each day they may perform, or fifty dollars per quarter; provided, that theatrical or dramatic representations given by performers for instruction only or entirely for charitable purposes shall not be herein included. For every circus wherein 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 the circus, ten dollars for each performance; for every sleight-of-hand performance or exhibition of legerdemain, ten dollars; for every fight between man and man, or between men and bulls, or between dogs and bulls, or between bears and dogs, or between bulls and any other animals, or between dogs and dogs, five hundred dollars for each performance;* for every cockpit, when kept for profit or upon which any money or thing of value is bet or paid, twenty-five dollars; for every menagerie, wax work, or exhibition of any kind where a separate fee for admission is demanded or received, ten dollars for every day on which fees for such admissions are received; provided, that exhibitions by associations organized for promotion of art, science, charity or benevolence shall be exempt from taxation; provided, that persons who form a museum composed entirely of the products of Texas shall have the right to exhibit same for a fee without paying any occupation tax; for every concert where a fee for admission is demanded or received, two dollars; provided, that entertainments when given by the citizens for charitable purposes or for the support or aid of literary or cemetery associations are exempt.

For every livery or feed stable, thirty cents for each stall and thirty cents for each hack, buggy, or other vehicle; for every hack, buggy, or other vehicle let for hire not connected with a livery, feed or sale stable, two dollars; for every wagon yard used for profit, not connected with a livery stable, five dollars. Livery stables,
etc.

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; from every fire, marine, health, live stock, guarantee or accident insurance company doing business in this state, an annual tax of two hundred dollars, and in every county in which they may do business, seven 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 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. Life insurance
companies.

There shall be levied on and collected from every person, firm or association of persons selling or offering for sale the "Sunday Sun," the "Kansas City Sunday Sun," or other publications of like character, whether illustrated or not, the sum of five hundred dollars in each county in which sale may be made or offered to be made.

There is hereby imposed upon and shall be collected from each and every person acting as general agent or agents of life, fire, marine and accident insurance companies who may transact any business as such in this state, an annual occupation tax of fifty dollars. By "general agent," as used in this law, is meant any person or firm representative of any insurance company in this state, or who exercises a general supervision over the business of such insurance company in this state, or over the local agencies thereof. General insur-
ance agent.
(Act of 1895,
p. 80.)

There is hereby imposed upon and shall be collected from each Local insur-
ance agen
Ib.

*But see Penal Code, for the act of 1895.

and every person or firm acting as local agent or agents of life, fire, marine and accident insurance companies who may transact any business as such in this state, an annual occupation tax of seven dollars. By "local agent," as used in this law, is meant any person or firm who may solicit, contract for or receive premiums for insurance in this state for any insurance company or companies, or who may deliver contracts or policies of insurance, including railway agents and employes who may solicit or receive premiums for accident insurance in this state; provided, that local agents shall pay county occupation taxes in each and every county in which they do business.

Agents of industrial life insurance companies.
Ib.

There is hereby imposed upon and shall be collected from each and every person or firm acting as local agent or agents of industrial life insurance companies who may transact any business as such in this state, an annual occupation tax of two dollars. By "industrial life insurance," as used in this law, is meant insurance adapted to the wants and necessities of the wage earners in that the policies are small and the premiums collected weekly at the homes of the insured, the maximum policy or insurance written on any one person being one thousand dollars.

Lightning rod agents.

For every person, firm or association of persons dealing in lightning rods, an annual tax of thirty-six dollars to the state and eighteen dollars as county tax to the county in which such business is carried on; upon every person canvassing for the sale of lightning rods, an annual tax of one hundred dollars and fifty dollars as county tax in each county in which such canvassing is done.

Cotton brokers, etc.
(Act of 1889.)

From every person, firm or association of persons following the occupation of cotton broker, cotton factor or commission merchant in a city of more than five thousand inhabitants, an annual tax of thirty-five dollars, and in all other cases an annual tax of eighteen dollars; provided, that a merchant who pays an occupation tax under this law shall not be considered as a "cotton broker." From every pawnbroker an annual tax of seventy-five dollars. From every cotton buyer or every buyer of wool, ten dollars; provided, that a merchant who pays an occupation tax, as herein prescribed, shall not be considered a cotton buyer or buyer of wool.

Sewing machine agents.

From every person, firm, agency or association of persons dealing in sewing machines, an annual tax of fifteen dollars to the state and seven 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 article, shall not be required to pay this special tax to sell sewing machines.

Clock peddlers.

From every person or firm who peddles out clocks or cooking stoves or ranges over the county, two hundred and fifty dollars for the state and one hundred dollars for each county in which they make a sale; provided, that a merchant who pays an occupation tax, as required by this article, shall not be required to pay this special tax for selling clocks and cooking ranges or stoves.

Express companies.
(Act of 1889.)

From any person, firm or association of persons doing an express business in this state an annual tax of one thousand 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 said express companies may be allowed to sell money

orders without paying an additional tax, but said express companies shall not be allowed to charge a greater per cent as commissions than postoffice money orders can be bought for; provided further, that they shall not be required to sell any order for less than five cents as a commission.

Each and every express company shall annually on or before the first day of March, through its superintendent or other chief officer or authorized agent, file with the comptroller of public accounts a report, under oath, showing the amount of charges and freights within this state paid to or uncollected by such companies on account of money, goods and merchandise carried within this state during the year ending December 31 next preceding, and said express companies at the time of filing the required report shall pay to the treasurer of the state one and one-half per cent of their gross receipts, as shown by their said reports. The receipt of the state treasurer shall be evidence of the payment of such taxes, and no occupation taxes shall be levied upon express companies by any county, city or town in this state; provided, this article shall not be construed to prohibit the levy of state, county and municipal taxes upon the real and personal property of such companies. Each and every express company failing or refusing to file the report herein required and pay the required taxes shall forfeit to the state twenty-five dollars for each day said report and payment are delayed. For the purpose of suit to recover the taxes and forfeitures venue and jurisdiction is hereby expressly conferred upon the courts of Travis county, and service upon any officer or agent of such company within this state shall in all respects be held legal and valid.

That part of the act of 1889 levying an occupation tax of one thousand dollars upon express companies, and all laws and parts of laws in conflict with this act, are hereby repealed.

From every person, firm or association of persons owning or running any palace, sleeping, or dining-room cars on any railroad in this state, there shall be collected an annual tax of fifty cents per mile for each and every mile of any and all railroads in this state over which such cars may run. The tax herein due shall be paid by such person, firm, or association of persons to the comptroller of public accounts, whose receipt under seal shall be issued to the person, company or firm, certified copies of which shall be evidence of the payment of state tax; provided, that nothing herein contained shall authorize the levy of any county or municipal tax upon such person, firm or association of persons.

From every person, firm or association of persons owning or running any railroad cars, steamboat, or stage coaches in this state, there shall be collected quarterly, on the first day of January, April, July and October of each year, a tax of one per cent on steamboats and stage coaches, and one per cent on railroads upon their gross receipts from all their passenger travel within this state. The said gross receipts to be returned under oath by said owner, agent or manager, 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.

From every chartered telegraphic company doing business in this state, there shall be collected one cent for every full rate message sent by any person within this state to any person within this state, and one-half that for any message less than a full rate message so

Same; cumulative law.

Occupation tax rate of 1889 repealed.

Sleeping cars.

Railroad cars.

Telegraph companies.

sent. This tax to be paid quarterly to the comptroller, on the sworn statement of the chief manager of said company or companies, or any other officer authorized by said company to make said statement, 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 such chartered companies for messages sent, and messages sent on official business by officers of the United States.

Telephone companies.

For every telephone company doing business in this state, an annual tax of fifty dollars, and five dollars to each county through which their lines may run.

Gas companies.

From each gas company manufacturing gas in towns and cities of ten thousand or more inhabitants, thirty-five dollars; in towns and cities having less than ten thousand inhabitants, twenty dollars.

Electric companies.

From each electric light company operating an electric light in a town or city of ten thousand inhabitants or more, thirty-five dollars annually; and in a town or city of less than ten thousand inhabitants, an annual tax of twenty dollars.

Loan agents.

From every person, firm or association of persons loaning money as agent or agents for any corporation, firm or association, either in this state or out of it, an annual occupation tax of one hundred dollars for the state for the principal office, and a county tax of ten dollars from each agent for each county in which he may do business, and no additional occupation tax shall be levied by any county, city or town in the state.

Credit agencies.

From each and every person, party, partnership or corporation engaged in the business of inquiring into and reporting upon the credit or standing of persons engaged in business in this state, or acting as agent or business manager in this state for any such person, party, partnerships or corporation, two hundred and fifty dollars; and provided further, that no county, city or town shall levy or collect any occupation tax upon or from any such person, party, partnership, joint stock association or corporation. The payment of this tax, evidenced by the receipt of the comptroller of public accounts, shall exempt the company or party paying the same from the payment of this tax in any other county; and payment of such tax shall not be required of any sub-agent or correspondent of the party or company carrying on such business in this state.

Skating rinks.

From each skating rink, twenty-five dollars.

Blanks to be furnished commissioners' courts by comptroller.

When the comptroller furnishes collectors with blank occupation tax receipts, he shall furnish the commissioners' courts with the numbers and value of the receipts furnished to their respective collectors, and such courts shall charge their respective collectors with the number and such proportion of the value of the receipt so furnished as shall apply to the county tax when such collectors shall make their settlements with the comptroller. The comptroller shall furnish the commissioners' courts with the numbers and value of the receipts used, and with the numbers and value of the receipts returned, and with the amount of the occupation taxes collected by their respective collectors.

County, ad valorem, etc. (Acts of 1885, p. 105.)

Art. 5050. The commissioners' courts of the several counties of this state shall have the power to levy, for county revenue pur-

poses, a tax of one-fourth of one per cent, and for roads and bridges fifteen cents on the one hundred dollars valuation of all property subject to a state tax by the provisions of this title, and for the payment of debts incurred prior to September, 1883, and for the erection of public buildings and other permanent improvements they shall have power to levy a tax not to exceed twenty-five cents on the one hundred dollars valuation in any one year; and for the improvement of public roads a tax not to exceed fifteen cents on the one hundred dollars valuation under the restrictions provided in chapter seven of title ninety-seven, and shall have power to levy a special tax for the further maintenance of public free schools, and the erection within each school district of school buildings therein in counties not exempt from the district school system; provided, that two-thirds of the qualified property taxpaying voters of the district, voting at an election to be held for that purpose, shall vote such tax not to exceed in any one year twenty cents on the one hundred dollars valuation of the property subject to taxation in such district, and shall have the right to levy one-half of the occupation tax levied by the state upon all occupations not herein otherwise specially exempted; provided, any one wishing to pursue any of the vocations named in this chapter, upon which a county occupation tax may be levied, may do so by paying the same quarterly; and provided further, the receipt of the proper officer under seal shall be prima facie evidence of the payment of such taxes as are herein named; and provided further, the provisions of this law shall not be deemed to effect the provisions of any law specially authorizing any commissioners' court to levy a different rate of tax; and 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 anything of the kind used for profit, for a period of less than twelve months; and provided further, the mayor and board of aldermen of any incorporated town or city shall in no case levy a greater tax on any occupation than that authorized by this chapter to be levied by the county commissioners' court; and be it further provided, that in all cases where any dealer in merchandise, wares or goods of any kind, subject to ad valorem or occupation taxes, or both, under the provisions of this law, who shall after the rendition of said merchandise, wares or goods for taxation, or after becoming liable for any occupation tax, become bankrupt or make assignment of said merchandise, wares or goods, then the collector of taxes shall at once present to the receiver or assignee of said dealer for payment of the amount due for said taxes by said dealer, and in case of failure of said receiver or assignee to at once pay the amount of said taxes, the said collector shall levy upon, seize and sell from the said merchandise, wares or goods, enough to satisfy the amount of said taxes, and said taxes until paid shall constitute a prior lien on said merchandise, goods and wares in default of said taxes.

(Acts of 1891,
p. 51.)

Art. 5051. [4667] The taxes herein levied by this 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.
Ib.
(Acts of 1879,
ch. 134, p. 148.)

Art. 5052. The collector of taxes shall keep a book of such size and character as may be necessary, in which shall be entered quarterly, at the following dates, to-wit, January 1, April 1, July 1 and October 1, or within ten days thereafter, in which to require the re-

Collector to
keep books,
etc.
(Acts of 1879,
p. 143.)

turns to be made under the provisions of this chapter, 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 occupations under article 5049, 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 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; provided, that nothing contained in this article is intended to affect the liability, which, in the absence of this statute, would be incurred under any special enactment of this state.

Tax collector
to be furnished
books, etc.
Ib. §7.

Art. 5053. 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 chapter.

Tax to be paid
before occupa-
tion begins.
Ib. §9.

Art. 5054. 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 law, this payment to be made for a period not less than three months. 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 chapter, and which lien shall authorize the collector to sell, after due notice, so much stock or other personal property of any person, firm or association of persons owing taxes under the provisions of this chapter, as will satisfy such claim, together with the cost of such proceeding.

Occupation
tax receipts
furnished
collectors.
Ib. §9.

Art. 5055. 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; such receipts 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 licensee, 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.

License.
(Acts of 1885,
p. 27, §1.)

Art. 5056. Any person, firm, corporation or association of persons who shall be the legal owners or holders of any unexpired occupation license issued in accordance with the laws of this state, shall be and are hereby authorized to transfer the same on the books of the officer by whom the same was issued.

Art. 5057. The assignee or purchaser of such unexpired occupation license shall be authorized to pursue such occupation under such unexpired license for and during the unexpired term thereof; provided, that such assignee or purchaser shall, before following such occupation, comply in all other respects with all the requirements of the law provided for in original applications for such licenses; and provided further, that nothing in this law shall be so construed as to authorize two or more persons, firms, corporations or associations of persons to follow the same occupation under one license at the same time; and provided further, that whenever any person, firm, corporation or association of persons following an occupation shall be closed out by legal process, the occupation license shall be deemed an asset of said person, firm, corporation or association of persons, and sold as other property belonging to said person, firm, corporation or association, and the purchaser thereof shall have the right to pursue the occupation named in said license or transfer it to any other person; provided, such occupation license shall under no circumstances be transferred more than one time.

Purchaser of unexpired license may pursue occupation, when, etc.
Ib. §2.

REVENUE AGENT.

Art. 5058. The governor is authorized to appoint a suitable person as revenue agent for the state, for the purpose of securing a better enforcement of the revenue laws of the state. The agent provided for herein shall be known as the state revenue agent. Said revenue agent shall be subject to the directions of the governor, who may, whenever in his judgment the public service demands it, direct the said revenue agent to investigate books and accounts of the assessing and collecting officers of this state, and all officers and persons disbursing, receiving or having in their possession public funds, and to make such other investigations and perform such other duties in the interest of the public revenues as the governor may direct. Whenever any such investigation is ordered by the governor, the revenue agent shall report to him in writing the results of such investigations, and point out the particulars, if any, wherein the revenue laws have been violated, their enforcement neglected, together with the names of the parties delinquent therein. Whereupon the governor shall institute civil and criminal proceedings through the attorney general in the name of the state against such delinquent parties who are reported by such agent to be delinquent. Said revenue agent shall have power at any time to examine and check up all and any disbursements or expenditures of money appropriated for any of the state institutions or for any other purpose or for improvements made by the state on state property or money received and disbursed by any board authorized by law to receive and disburse any state money.

Duties. (Acts of 1891, p. 87.)

Art. 5059. When said revenue agent acting under the direction of the governor calls on any person connected with the public service to inspect his accounts, records or books, said officers or official so called upon shall submit to said agent all books, records and accounts so called for without delay.

Shall have access to books, etc.
Ib.

Art. 5060. Said revenue agent shall receive as compensation for his services not exceeding two thousand dollars per annum, together with his actual traveling expenses, which shall be paid on the approval of the same by the governor; provided, said revenue agent shall not be allowed traveling expenses for any service connected with the examination and investigation of the accounts of any institution in Travis county.

Compensation, etc.
Ib.

CHAPTER ONE A.

TAXATION—SALE OF LIQUORS REGULATED.

	Article		Article
Occupation tax levied.....	5060a	Duties of county clerk.....	5060f
Counties may levy	5060b	Licensee to execute bond, conditioned, etc.	5060g
Prerequisites to issue of license.....	5060c	Habitual drunkard defined.....	5060h
License to issue, when.....	5060d	Producers of domestic wines exempt....	5060i
License to issue for one year, etc.....	5060e		

Occupation tax for the selling of spirituous, etc., liquors. (Act of 1893, p. 177.)

Article 5060a. Hereafter there shall be collected from every person, firm or association of persons selling spirituous, vinous, or malt liquors, or medicated bitters, within this state, an annual tax on each separate establishment as follows: For selling spirituous, vinous or malt liquors in quantities of one gallon or less than one gallon, three hundred dollars; for selling such liquors in quantities of one gallon or more than one gallon, three hundred dollars; provided, that in selling one gallon, the same may be made up of different liquors in unbroken packages, aggregating not less than one gallon. For selling malt liquors exclusively, fifty dollars; provided, that nothing in this article shall be so construed as to exempt druggists who sell spirituous, vinous or malt liquors, or medicated bitters, on the prescription of a physician, or otherwise, from the payment of the tax herein imposed; provided further, that this article shall not apply to the sale by druggists of tinctures and drug compounds in the preparation of which spirituous, vinous, or malt liquors, or medicated bitters, on the prescription of a physician, or otherwise, from the payment of the tax herein imposed; provided further, that this article shall not apply to the sale by druggists of tinctures and drug compounds in the preparation of which spirituous, vinous or malt liquors are used, and which compounds are not intoxicating beverages prepared in evasion of the provisions of this chapter.

Counties may levy.
Ib.

Art. 5060b. The commissioners' court of the several counties in this state shall have the power to levy and collect from every person or association of persons selling spirituous, vinous or malt liquors, or medicated bitters, a tax equal to one-half the state tax herein levied; and where any such sale is made in any incorporated city or town, such city or town shall have the power to levy and collect a tax upon such sale equal to that levied by the commissioners' court of the county in which such city or town is situated.

Prerequisites to the issue of license to sell.
Ib.

Art. 5060c. Every person, firm or association of persons desiring to engage in the sale of spirituous, vinous, or malt liquors, or medicated bitters, shall, before he or they commence the sale of such liquors or medicated bitters, file with the county clerk of the county in which he or they propose to sell such spirituous, vinous or malt liquors, or medicated bitters, an application for license to engage in the sale of such liquors or medicated bitters. Said application shall be made on oath, on forms to be provided by the comptroller, and shall designate the place at which it is proposed to carry on the sale of such liquors or medicated bitters; if in a city, the street and number of the house shall be given, and the quantities in which he or they propose to sell, whether one gallon or more than one gallon, one gallon and less than one gallon, or whether they desire to sell malt liquors exclusively; and shall also state in said application whether or not the said liquors are to be sold to be drunk on the

premises; and shall pay to the collector of taxes of the county in which he or they propose to sell such spirituous, vinous, or malt liquors, or medicated bitters, the entire annual tax herein levied, according to the quantities in which he or they propose to sell, and the entire annual tax upon such business, as may be levied by the commissioners' court of such county, and file with the county clerk bond as required in article 5060g of this chapter. In case the selling of such liquors or medicated bitters be carried on in a city or incorporated town, he or they so selling shall, in addition to the state and county tax herein required to be paid, pay to collector of taxes in such city or town such tax as may be levied on said business by such city or town, and all taxes herein levied shall be paid in advance. All licenses issued under the provisions of this chapter shall be posted by the licensee in a conspicuous place in his or their place of business, and on failure to so post such license, he or they so failing shall be considered as having no license.

Art. 5060d. Upon filing the sworn application as provided in article 5060c, and paying to the collector the annual state and county tax herein provided for, and filing such bond as is required by article 5060g, the county clerk of said county shall issue to said applicant a license to sell spirituous, vinous, or malt liquors, or medicated bitters, at the place and in the manner and quantities set forth in the application, and no sale shall be made until such license is procured. The receipt of the tax collector shall be evidence of the payment of the tax. For issuing licenses herein provided for, county clerks shall be entitled to charge a fee of twenty-five cents for each license.

License to
issue, when.
1b.

Art. 5060e. No license shall be granted for a longer or shorter period than one year. The particular place and house in which the liquors are to be sold shall be designated in the license, and no license shall authorize any person to sell spirituous, vinous, or malt liquors, or medicated bitters, at any other place or house than that designated in the license; provided, that if any person or association of persons having a license to sell such liquors, desires to change his or their place of business, such change may be made by presenting the license to the clerk of the county and having the new place of business inserted therein, but in no case to admit of the temporary closing of one place of business to sell at another place.

License to
issue for one
year, and
shall designate
place of
sale, etc.
1b.

Art. 5060f. The county clerk in each and every county in this state shall, between the first and tenth day in each month, forward to the state revenue agent a sworn statement, giving the names of all persons who have filed applications for license during the preceding month, and the tax collector of each county shall keep a register in which shall be entered the names of all persons paying taxes under this chapter, with the date of payment, and shall, between the first and tenth day of each month, make to the state revenue agent a sworn report, giving the names of all persons who have paid a liquor tax during the preceding month, and the character of tax paid by each. The reports provided for in this article shall be made upon blank forms to be furnished by the comptroller.

County clerk
to report applications for
license to state
revenue agent.

Art. 5060g. Any person, firm or association of persons desiring to engage in the sale of spirituous, vinous, or malt liquors, or medicated bitters capable of producing intoxication, to be drunk on the premises, shall, before engaging in such sale, be required to enter into bond in the sum of five thousand dollars; provided, however, that any person, firm, or corporation of persons dealing exclusively in malt liquors shall be required to give bond only in the sum of one

Licensee to
execute bond;
conditions of
bond, etc.
1b.

thousand dollars, with at least two good, lawful, and sufficient sureties, payable to the state of Texas, to be approved by the county judge, conditioned that said person, firm, or association of persons so selling spirituous, vinous, or malt liquors, or medicated bitters capable of producing intoxication, in any quantity, to be drunk on the premises, shall keep an open, quiet, and orderly house or place for the sale of spirituous, vinous, or malt liquors, or medicated bitters capable of producing intoxication; and that such person, firm, or association of persons, or his or their agent or employe, will not sell nor permit to be sold in his or their house or place of business, nor give nor permit to be given, any spirituous, vinous, or malt liquors, or medicated bitters capable of producing intoxication, to any person under the age of twenty-one years, or to a student of any institution of learning, or to any habitual drunkard, or to any person after having been notified in writing, through the sheriff or other peace officer, by the wife, mother, daughter, or sister of the person, not to sell to such person; and that he or they will not permit any person under the age of twenty-one years to enter and remain in such house or place of business; and that he or they will not permit any games prohibited by the laws of this state to be played, dealt, or exhibited in or about such house or place of business; and that he or they will not rent or let any part of the house or place in which he or they have undertaken to sell spirituous, vinous, or malt liquors, or medicated bitters capable of producing intoxication, in any quantity, to be drunk on the premises, to any person or persons for the purpose of running or conducting any game or games prohibited by the laws of this state; and that he or they will not adulterate the liquors sold by them in any manner, by mixing with the same any drug; and that he or they will not knowingly sell or give away any impure or adulterated liquors of any kind; which said bond shall be filed in the office of the county clerk of the county where the business is conducted, and shall be recorded by such clerk in a book to be kept for such purpose, for which service the said clerk shall be entitled to a fee of seventy-five cents; which said bond may be sued on at the instance of any person or persons aggrieved by the violation of its provisions, and such person shall be entitled to recover the sum of five hundred dollars as liquidated damages for each infraction of the condition of such bond, and the said bond shall not be void on the first recovery, but may be sued on until the full penal sum named therein shall have been recovered. In addition to civil proceedings for individual injuries, brought on said bond as above indicated, if any person, firm, or association of persons shall violate any of the conditions of the bond herein required, it shall be the duty of the county and district attorneys, or either of them, to institute suit thereupon in the name of the state of Texas, for the use and benefit of the county, and the amount of five hundred dollars as a penalty shall be recovered from the principals and sureties upon a breach of any of the conditions thereof; and whenever the first or subsequent bond as required is exhausted by suit at the instance of individuals, or for the use of the county, a new similar bond shall be given and approved before the dealer shall have the right to further pursue the business of a liquor seller; or, in case suit is pending on any such bond, and the county or district attorney shall make and file an affidavit with the clerk of the county court that he believes the bond of the defendant will be exhausted by said suit, the clerk shall at once notify the liquor dealer thereof, and it shall be the duty of the liquor

dealer, within twenty days from the time the bond is exhausted, or, in other event, within twenty days from the time the notice is given, to give a new bond similar to the bond first given, to be approved in the same way; and until such new bond is given and approved, when it is required by this chapter, the liquor seller shall not have the right to further pursue the business of selling liquors; and any person, firm, or association of persons who shall sell liquors, in any quantity, to be drunk on the premises, without giving the first bond, or the new bond, as required by this chapter, shall be deemed guilty of a misdemeanor, and on conviction shall be fined the same amount provided for in cases where no license has been obtained. An open house, in the meaning of this chapter, is one in which no screen or other device is used or placed either inside or outside of such house or place of business for the purpose of or that will obstruct the view through the open door or place of entrance into any such house or place where intoxicating liquors are sold to be drunk on the premises. A quiet house or place of business, in the meaning of this chapter, is one in which no music, loud or boisterous talking, yelling, or indecent or vulgar language is allowed, used or practiced, or any other noise calculated to disturb or annoy any persons residing or doing business in the vicinity of such house or place of business, or those passing along the streets or public highways. By an orderly house is meant one in which no prostitute or lewd woman or women are allowed to enter or remain; and it is further provided, that said house must not contain any vulgar or obscene pictures. Any surety on such bond may relieve himself from further liability thereon by giving the principal in said bond notice in writing that he will no longer remain as surety on said bond and by filing with the county judge an affidavit that such notice has been given, and if within five days after such notice if he fail to make a new bond, he shall cease to pursue said business until a new bond is given. And any person who shall continue to pursue said business after such affidavit is filed shall be guilty of a misdemeanor, and shall be punished as provided in cases where no license has been procured; provided, that where the sale is made in good faith, with the belief that the minor was of age, and there is good ground for such belief, that shall be a valid defense to any recovery on such bond.

Art. 5060h. An habitual drunkard, within the meaning of this chapter, is one who makes it a habit, or who habitually becomes intoxicated by the voluntary use of intoxicating liquors; and in all suits for the breach of such bond for unlawfully selling to an habitual drunkard, the question whether or not such person is an habitual drunkard shall be determined by the court or jury trying such case, as any other fact.

Habitual
drunkard de-
fined.

Art. 5060i. The provisions of this chapter shall not apply to wines produced from grapes grown in this state, while the same is in the hands of the producers or manufacturers thereof.

Producers of
domestic
wines exempt.

CHAPTER TWO.

OF THE PROPERTY SUBJECT TO TAXATION AND THE MODE OF RENDERING THE SAME.

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All property to be taxed. (Act Aug. 21, 1876, p. 275, §1.)

Article 5061. [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.

Real property includes, what. Ib. §2.

Art. 5062. [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.

Personal property includes, what. (Acts of 1879, ch. 40, p. 39, §3.)

Art. 5063. [4671] Personal property shall, for the 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.

Definition of terms. (Acts of 1876, p. 275, §4.)

Art. 5064. [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.

The term "credits" wherever used in this title shall be held to mean "Credits." 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.

The term "tract or lot" and "piece or parcel" of real property, and "Tract or lot." 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.

Every word importing the single 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 implying the masculine gender only may be extended and applied to females as well as males. "Singular and plural."

Wherever the word "oath" is used it shall be held to mean oath "Oath." or affirmation; and the word "swear" may be held to mean affirm.

The words "town or district" wherever used shall be held to mean "Town or village, city, ward or precinct, as the case may be." district."

The term "true and full value" wherever used shall be held to mean "Value." 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.

The term "person" shall be construed to include firm, company or "Person." corporation.

Art. 5065. [5673] The following property shall be exempt from taxation, to-wit: Exemption from taxation. (Const., art. 8, §§1, 2; art. 11, §3.) 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, 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.

Schools and churches.

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.

Cemeteries.

3. All property, whether real or personal, belonging exclusively to this state or any political subdivision thereof, or the United States.

Public property

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.

County buildings.

5. All lands, houses and other buildings belonging to any county, precinct or town used exclusively for the support or accommodation of the poor.

Poor-houses

6. All buildings belonging to institutions of purely public charity,

Public charities

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. Art. 5066. [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. Art. 5067. [4675] All property shall be listed or rendered in the manner following:

By the owner. 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 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.

Cestui que trust. 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.

Receivers. 7. The property of corporations whose assets are in the hands of receivers, by such receivers.

Corporations. 8. The property of a body politic or corporate, by the president or proper agent or officer thereof.

Copartnership. 9. The property of a firm or company, by a partner or agent thereof.

Manufactories. 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.

11. The stock of nurseries, growing and otherwise, in the hands of nurserymen, shall be listed and assessed as merchandise. Nurseries.

Art. 5068. [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.

Art. 5069. 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. To be rendered in but one county. (Acts of 1879, p. 153; amend. 1895, No. 104, Sen. Jour., p. 485.)

Art. 5070. All persons, companies and corporations owning pastures in this state which lie on county boundaries shall be required to list for assessment all live stock of every kind owned by them in said pastures in the several counties in which such pastures are situated, listing in each county such portion of said stock as the land in such county is of the whole pasture. All persons, companies and corporations owning any kind of live stock in pastures not their own shall list said live stock in the several counties in which such pastures are situated in the same manner; and in both cases the tax upon such live stock shall be paid to the tax collectors of the several counties in which such live stock is listed and assessed. Live stock, when and how rendered. (Acts of 1889, p. 29.)

Art. 5071. Any lands which may have been assessed in any county according to the abstract of land titles, and the taxes paid thereon according to law, shall not be afterwards subject to the payment of taxes for the same period in a different county, although a subsequent survey and determination of the county boundaries may show said lands to be in a different county from that in which they were originally assessed; and any sales of such lands for alleged delinquency shall be illegal and void. Taxes not to be paid twice, etc. (Acts of 1879, p. 153, §2.)

Art. 5072. [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. (Acts of 1876, p. 277.)

Art. 5073. [4678] All railroad, telegraph, plank road and turnpike companies shall list all of their real and personal property, giving the number of miles of roadbed and line in the county where such roadbed 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. 5074. [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. 5075. [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.

The statement
and its requi-
sites.
Ib. §14.

Art. 5076. [4681] Such statement shall truly and distinctly set forth—

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. The 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.

Art. 5077. [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.

Certain credits and stocks not to be listed.
Ib. §14.

Art. 5078. [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. 5079. [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:

Assessment of personal property by rendition by banker, broker, etc. (Acts of 1895, p. 37.)

1. If a national bank, the president or some other officer of such bank shall furnish to the assessor of the county in which such bank is located a list of the names of all the shareholders of the stock, together with the number and amount of the shares of each stockholder of stock in said bank, and the shareholders of the stock in national banks shall render to the tax assessor of the county in which said bank is located the number of their shares and the true and full value thereof. All shares of stocks in national banks not rendered to the assessor of taxes in the county where such bank is located within the time prescribed by law for listing property for taxes shall be assessed by the assessor against the owner or owners thereof as unrendered property is assessed; but the tax roll shall show the name of the owner or owners thereof as per statement furnished by the president or other officers of said bank.

2. National banks shall render all other bonds and stocks of every kind, except United States bonds, and all shares of capital stocks or joint stock or stocks of other companies or corporations held as an investment or in any way representing assets, together with all other personal property belonging or pertaining to said bank, except such personal property as is specially exempted from taxation by the laws of the United States.

3. National banks shall be required to render all of their real estate as other real estate is rendered, and all the personal property of said national banks herein taxed shall be valued as other personal property is valued.

4. All other banks, bankers, brokers or dealers in exchange, or stock jobbers shall render their list in the following manner:

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

2. 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.

3. From the aggregate amount of the items named in the first and second of the last two subdivisions shall be deducted the amount of money on deposit.

4. The amount of bonds and stocks of every kind, except United States bonds, and all shares of capital stocks or joint stocks of other companies or corporations held as an investment or in any way representing assets.

5. All other property belonging or appertaining to said bank or business, including both personal property and real estate, shall be listed as other personal property and real estate.

Assessment of
real estate by
banks.
(Acts of 1885,
p. 106.)

Art. 5080. Every banking corporation, state or national, doing business in this state shall, in the city or town in which it is located, render its real estate to the assessor of taxes at the time and in the manner required of individuals. At the time of making such rendition the president or some other officer of said bank shall file with said assessor a sworn statement showing the number and amount of the shares of said bank, the name and residence of each shareholder, and the number and amount of shares owned by him. Every shareholder of said bank shall, in the city or town where said bank is located, render at their actual value to the assessor of taxes all shares owned by him in such bank; and in case of his failure so to do, the assessor shall assess such unrendered shares as other unrendered property. Each share in such bank shall be taxed only for the difference between its actual cash value and the proportionate amount per share at which its real estate is assessed. The taxes due upon the shares of banking corporations shall be a lien thereon, and no banking corporation shall pay any dividend to any shareholder who is in default in the payment of taxes due on his shares; nor shall any banking corporation permit the transfer upon its books of any share, the owner of which is in default in the payment of his taxes upon the same. Nothing herein shall be so construed as to tax national or state banks, or the shareholders thereof, at a greater rate than is assessed against other moneyed capital in the hands of individuals.

No deductions
in certain
cases.
(Acts of 1876,
p. 280, §17.)

Art. 5081. [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.

Assessment by
railroads.
(Acts of 1885,
p. 61.)

Art. 5082. [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 of each year, to the assessor of each county and incorporated city or town, into or through which any part of their road may run or in which they own or are in possession of real estate, a classified list of all real estate owned by or in possession of said company in said county, town or city, specifying—

1. The whole number of acres of land, lot or lots, exclusive of their right of way and depot grounds owned, possessed or appropriated for their use, with a valuation affixed to the same.

2. The whole length of the railroad and the value thereof per mile, which valuation shall include right of way, roadbed, superstructure, depots and grounds upon which said depots are situate, and all shops and fixtures of every kind used in operating said road.

3. All personal property of whatsoever kind or character, except the rolling stock belonging to the company or in their possession in each respective county, listing and describing the said personal property in the same manner as is now required of citizens of this state.

Art. 5083. [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 situated, setting forth the true and full value of the rolling stock of said railroad, together with the names of all the counties through which it runs, and the number of miles of roadbed in each of said counties, and the said assessment shall be submitted to the board of equalization of the county in which its principal office is situated for review, as is provided by article 5120 of this code and the other laws of this state in respect to boards of equalization, on the first Monday in June in each year, or as soon thereafter as practicable, and such board shall certify such final valuation when made, without delay, to the comptroller of public accounts, who shall proceed at once to apportion the amount of such valuation among the said counties in proportion to the distance such road may run through any such county, and shall certify such apportionment to the assessors of such counties, and the same shall constitute part of the tax assets of such counties, and the assessor of each of said counties shall list and enter the same upon the rolls for taxation, as other personal property situated in said county; provided, that any railway company organized, and having its principal office without the state, and which may own or operate, as lessee or otherwise, any line of railroad which is partly within the state and partly without, may render its rolling stock for taxation in the county where such company owning said railroad has established its office within this state, and a proportional part of such company's rolling stock shall be rendered and assessed for taxation within the state, according to the number of miles of such railway therein, as compared with the number of miles without the state.

Railroads to return sworn statements, when, etc. (Acts of 1885, p. 30.)

Art. 5084. [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 and collections of corporate property. (Acts of 1876, p. 280, §§20, 21.)

Art. 5085. [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.

Assessments in owner's name. Ib. §21.

Lien for taxes.
Ib. §22.

Art. 5086. [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.
Ib. p. 281, §23.

Art. 5087. [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.
Ib. §24.

Art. 5088. [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 and 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 specified article or for a specified 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.

United States paper money taxable.
(Acts 1895, p. 49.)

Art. 5088a. Circulating notes of national banking associations and United States legal tender notes and other notes and certificates of the United States, payable on demand and circulating or intended to circulate as currency, and gold, silver and other coin, shall be hereafter subject to taxation as money on hand or on deposit, under the laws of this state.

Assessed as money on hand.
Ib.

Art. 5088b. The assessor of taxes shall assess the same in the same manner as money on hand or on deposit or other personal property, as provided for in the general assessment laws of this state.

CHAPTER THREE.

OF THE ASSESSMENT OF TAXES—ELECTION AND QUALIFICATION OF THE ASSESSOR.

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Article 5089. [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. 8, §14.) (Act Aug. 21, 1876, p. 265, §1.)

Art. 5090. [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 the 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. 5091. [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 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. Oath and bond. (Ib. p. 266, §2.)

Purview of
the bond.
Ib.

Art. 5092. [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. 5093. [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. 5094. [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. 5095. [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. 5096. [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 adminis-
ter oaths.
Ib. p. 266, §4.

Art. 5097. [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. 5098. [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. 5099. [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. 5100. [4704] The assessor of taxes, for every failure or neglect to administer the oath or affirmation prescribed in article 5098 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. 5101. Any evasion by means of artifice or temporary or fictitious sale, exchange or pretended transfer upon any bank books of gold and silver coin, bank notes or other notes or bonds subject to taxation under the laws of this state for United States non-taxable treasury notes or any notes or bonds not so subject to taxation, and any such pretended sale, exchange or transfer not made in good faith, and by actual exchange and delivery of the funds so sold, exchanged or transferred and made only by entry on bank books, or by any express or implied understanding not to immediately make a bona fide and permanent sale, shall be deemed prima facie to be a fraud upon the public revenue of this state.

Fraud upon the public revenue.
(Acts of 1891, p. 39, §1.)

Art. 5102. All assessors of taxes in this state shall require all taxpayers when assessed by them to make oath as to any such sale, exchange or transfer made by them on the first day of January or within sixty days before said first day of January of any year for which any such assessment is made, as to the good faith and bona fide business transaction of any such sale, exchange or transfer, as above set forth, if any such should have been made by them, and if it should be disclosed that any such pretended sale, exchange or transfer has been made for the purpose of evading taxation, then and in that event the assessor shall list and render against such person the coin, bank notes or other notes or bonds subject to taxation under the laws of this state; provided, that if any person shall make a false affidavit as to any of the foregoing facts he shall be deemed guilty of perjury and be punished as is now provided by law.

Taxpayer to make oath.
Ib. §3.

Art. 5103. [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 5098, of such property in the form hereinafter prescribed.

When assessments to be made.
(Acts of 1876, p. 265, §9.)

Art. 5104. [4706] Should any property be listed or assessed for taxation after the first day of June of any year, or should the as-

Irregular assessments valid.
Ib.

essor of taxes or his deputy fail to administer the requisite oath or attest the same in the mode prescribed by law, or should the party 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.

If taxpayer is absent, etc.
Ib. p. 268, §10.

Art. 5105. [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.

Or refuses to list.
Ib. §11.

Art. 5106. [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.

Duty of assessor in such cases.
Ib. §12.

Art. 5107. [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 assessment shall be as valid and binding as if such property had been rendered by the proper owner thereof.

Commissioner of general land office to furnish abstracts to assessors.
(Acts of 1879, p. 24.)

Art. 5108. The commissioner of the general land office shall furnish to each assessor of taxes in this state a correct abstract of all the surveys of land and number of acres therein in their respective counties, and on the first day of January of each year said commissioner of the general land office shall furnish said assessors an additional list of all new valid surveys in his county during the year; provided, that in case the records of the land office do not show the quantity of acres in a survey, the surveyor of the district shall furnish said assessor a certified statement of the number of acres therein.

Books to be furnished assessors. How to be filled by assessors.
Ib. §2.

Art. 5109. The commissioners' courts of each county in this state shall procure and furnish the assessor of said county three well-bound books of not less than six hundred and forty pages each, and an index book for same, and such other stationery as may be necessary; said books to be of the best material and make, and shall have printed headings as per following form:

<i>Assessor's Abstract for</i> _____ <i>Co.</i>										
<i>Abstract No.</i> _____										
PATENT					CERTIFICATE					
No.	Vol.	To Whom Issued	Date			Acres	No.	Class	Character	To Whom Issued
			Month	Day	Year					
<i>Rendered for Taxation.</i>										
Year	By Whom Rendered	Acres	Value	Year	By Whom Rendered	Acres	Value	Year	By Whom Rendered	Value

Art. 5110. The blanks to be filled by the assessor with the abstract number, name of party to whom the certificate was issued, the number, class and character of the certificate, the name of the party to whom the patent issued, number of volume of patent, the month, day and year it was issued, and the number of acres each survey contains; which whole survey shall stand as a debit against the assessor.

How to be filled by assessor. Ib. §2.

Art. 5111. Each assessor shall be required to make an abstract of all the blocks or subdivisions of each of the cities or towns or vil-

Blocks and lots in cities. Ib. §3.

lages of his county, in a book or books of at least four hundred and eighty pages each, to be furnished him by the commissioners' court of his county for that purpose, with an index book to the same, which said book or books shall have a blank space for a diagram or plot of each block or subdivision, giving the number of the lots as per form following:

<i>Block No.</i> _____ <i>Assessor's Abstract of City Lots in</i> _____ <i>County, City of</i> _____		<div style="border: 1px solid black; width: 100%; height: 100%; position: relative;"> <div style="position: absolute; top: 50%; left: 50%; transform: translate(-50%, -50%); font-size: 2em;">/</div> </div>	
Year	Owner's Name		
Year	Owner's Name	No. Lot	Value
Year	Owner's Name	No. Lot	Value

And the said assessor shall draw a plot of each block in the blank space left for that purpose, giving the number of each lot. And the whole of said block or subdivision shall be a debit against the assessor.

Art. 5112. Each assessor in this state, when he shall have made the assessment of his county for each year, shall on the first day of June of each year, or as soon thereafter as practicable, carry from each person's assessment the number of acres and its value on each survey of lands, lots or blocks to that particular survey, lot or block found on the abstract books provided in articles 5110, 5111 and 5119; and that all the parts of each survey or block placed on said abstract books shall be a credit to the assessor on that particular survey. And said assessor shall deduct the total number of acres rendered on each survey or block from the total number of acres of the whole survey or block as is shown by said abstract, and if any part is left unrendered, then he shall assess the same to the owner or owners thereof, if known, and if unknown then to "unknown owners," and the value thereof shall be affixed by him, sanctioned by the board of equalization; provided, that the owner or owners of any survey and grant of land may show by a survey, to be made by the county surveyor of the county, that the survey and grant in which they are interested does not contain the full complement of acres, showing how many acres are in fact embraced within the calls of the particular survey and grant.

Duties of assessor as to same.
Ib. §4.

Art. 5113. The assessor's abstracts shall be kept in his office at the county seat of his county, as records of his office, and shall be at all times subject to the inspection of the public. The index book shall show the original grantee, the number of acres, the abstract number, and the volume and page in which each survey is placed.

To be kept in office.
Ib. §5.

Art. 5114. Should there be any survey of lands, lots or blocks not on the abstract book or books which are by law subject to taxation, the assessor shall enter such lands, lots or blocks on the assessment list as though the same appeared on said abstract books.

Lands not on abstract to be placed there.
Ib. §6.

Art. 5115. Each assessor of taxes shall procure from the board of equalization of his county a certificate that all the surveys and parts of surveys of lands in his county, and all the lots and blocks of the cities and towns of his county are rendered for taxation, which certificate shall be forwarded to the comptroller of this state before he shall issue to said assessor a draft on the tax collector of his county. And the same rule shall apply to the commissioners' court before they issue drafts on the county treasurer for his pay for assessing the county taxes.

Certificate from board of equalization.
Ib. §7.

Art. 5116. The board of equalization or the county commissioners' court shall, if the assessor fails to perform the duties required by this chapter within a reasonable time, employ some other competent person to have the requirements of this law carried out, and the compensation therefor shall be deducted from the assessor's pay for that year.

Substitute to be employed if assessor fails.
Ib. §8.

Art. 5117. The comptroller of this state shall be required to have this law carried out in the unorganized counties of this state, where lands are located.

Unorganized counties.
Ib. §9.

Art. 5118. [4710] The manner and form for assessing property for taxation shall be substantially as follows, to-wit:

Manner and form of assessing.
(Acts of 1896, p. 38.)

1. The name of the owner.
2. Abstract number.
3. From whom and how acquired.
4. The name of the original grantee.
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. The 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 hereinafter 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 value thereof.
22. Number of carriages, bicycles or tricycles, buggies or wagons of whatsoever kind and value thereof.
23. Number of sewing machines and knitting machines and the value thereof.
24. Number of clocks and watches and the 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, wharves, boats, barges, 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 material and manufactured articles which such person is required to list as a manufacturer.
34. The value of manufactures, tools, implements and machinery other than boilers and engines, which shall be listed as such.
35. Number of steam engines and boilers and value thereof.
36. The amount of moneys of bank, banker, broker, stock jobber or any other person.
37. The amount of solvent credits of bank, banker, broker, stock jobber or any other person.
38. The amount and value of bonds and stocks (other than United States bonds).
39. The amount and value of shares of capital stock companies and associations not incorporated by the laws of this state.
40. The value of property of companies and corporations other than property hereinbefore enumerated.
41. The value of stock and furniture of saloons, hotels and eating houses.
42. The value of every billiard, pigeon hole, bagatelle, and other similar table, together with the number thereof.
43. Every franchise, the description and value thereof.
44. The value of all other property not enumerated as above.

Art. 5119. [4711] If the assessor of taxes discovers 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. 5120. The commissioners' courts of the several counties of this state shall convene and sit as a board of equalization on the second Monday in June of each year, or as soon thereafter as practicable before the first day of July, to receive all the assessment lists or books of the assessors of their counties for inspection, correction, equalization and approval.

Boards of equalization. (Acts of 1879, p. 44; amend. 1895, Sen. Jour., No. 108, p. 486.)

1. They shall cause the assessor to bring before them at such meeting all said assessment lists, books, etc., for inspection, and see that every person has rendered his property at a fair market value, and shall have power to send for persons, books and papers, swear and qualify persons, to ascertain the value of such property, and to lower or raise the value on the same.

2. They shall have power to correct errors in assessments.

3. They shall equalize improved lands into three classes—the first class to embrace the better quality of land and improvements; the second class to embrace the second quality of lands and improvements, and the third class to embrace lands of but small or inferior improvements. The unimproved lands shall embrace first, second and third class, and all other property made as nearly uniform as possible.

4. After they have inspected and equalized as near as possible, they shall approve said lists or books and return to assessors for making up the general rolls, when said board shall meet again and approve the same, if found correct.

5. Whenever said board shall find it their duty to raise the assessment of any person's property, it shall be their duty to order the county clerk to give the person written notice, who rendered the same, that they desire to raise the value of the same. It shall be their duty to cause the county clerk to give ten days' written notice before their meeting by publication in some newspaper, but if none is published in the county, then by posting a written or printed notice in each justice's precinct, one of which must be at the court house door.

6. The assessors of taxes shall furnish to 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 refuse to swear or to qualify, or to have signed the oath or affirmation as required by law, together with the assessment of said persons' property made by him through other information; and the board of

equalization shall examine, equalize and correct assessments so made by the assessor, and when so revised, equalized and corrected, the same shall be approved.

Assessment of real property for previous years. (Acts of 1888, p. 4; *Ib.*, 1895, Sen. Jour., p. 486.)

Art. 5120a. [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 for which it has not been assessed, 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 back taxes on personal property. (Acts of 1887, p. 127.)

Art. 5121. If the assessor of taxes shall discover in his county any property, or, outside of his county but belonging to a resident of the county, any personal property which has not been assessed or rendered for taxation every year for two years past, he shall list and assess the same for each and every year thus omitted which it has belonged to said resident, in the manner prescribed for assessing other property, and such assessment shall be as valid and binding as though it had been rendered by the owner thereof.

Unlisted property; supplemental roll. (Acts of 1895, p. 103.)

Art. 5121a. Collectors of taxes of counties, cities and towns, when any tax payer applies to them for the purpose of ascertaining the amount of his taxes, and the collector finds that his name or his property does not appear on the tax roll, shall, and it is hereby made their duty to, assess said taxpayer then and there, collect the taxes and enter the same upon a supplemental tax roll to be made by him. He shall make out, on forms to be furnished by the comptroller, three copies of such supplemental roll, one copy to be delivered to the comptroller of public accounts, one to be delivered to the county clerk, and one to be filed in the collector's office. Said supplemental tax roll shall be made out and delivered to the county commissioners' court with all other papers pertaining to the final settlement of said tax collector, and the same shall be examined and approved by the county commissioners' court, in like manner as upon the tax roll of the tax assessor. The collectors of taxes are hereby authorized and empowered to administer all oaths necessary to obtain a full and correct assessment of all taxable property assessed by them under this act. The oath shall be the same as is administered by tax assessors under existing law. The collector of taxes shall receive the following compensation for his services on all assessments made by him under this act, to-wit: For assessing the state and county taxes, four cents for each one hundred dollars of property so assessed, and for assessing the poll tax, five cents for each poll, which fee shall be paid in the same way as the tax assessor's fee in article 5133.

Assessor to follow instructions. (Acts of 1876, p. 265.)

Art. 5122. [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 public accounts, and furnished to them by the county judge in pursuance of law.

Equalization of assessments. *Ib.* p. 270, §17.

Art. 5123. [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.

Art. 5124. [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 without complaint.

Art. 5125. [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 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.

Assessor to furnish list of delinquents. Ib. §18.

Art. 5126. [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.

And submit lists to board of equalization. Ib. §20.

Art. 5127. [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.

Shall make out rolls in triplicate. Ib. §19.

Art. 5128. [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.

Also rolls of unrendered property. Ib. p. 271, §21.

And add up
columns.
Ib. §22.

Art. 5129. [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. 5130. [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.

All lists, etc.,
filed in county
clerk's office.
Ib. §24.

Art. 5131. [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.

Rolls, how
distributed.
Ib. §25.

Art. 5132. [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.

Compensation.
(Acts of 1883,
p. 33.)

Art. 5133. [4724] Each assessor of taxes shall receive the following compensation for his services, which shall be estimated upon the total values of the property assessed, as follows: For assessing the state and county tax, on all sums of two millions of dollars or less, five cents for each one hundred dollars of property assessed, and all sums over two millions and less than five millions of dollars, two and one-half cents on each one hundred dollars, and all sums over five millions of dollars, two cents on each one hundred dollars. Two-thirds of the above fees shall be paid by the state and one-third by the county, and for assessing the poll tax, five cents for each poll, which shall be paid by the state.

How paid by
the state.
Ib. §27.

Art. 5134. [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.

Art. 5135. [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. 5136. [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 of 1879, ch. 47.)

Art. 5137. [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.)

PROPERTY IN UNORGANIZED COUNTIES.

Art. 5138. 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, and the taxes collected by the collector of such organized county; and the same remedies for the enforcement of the assessment and collection of such taxes shall apply as the law directs for the assessment and collection of the taxes on property situated in organized counties of this state.

Lands in unorganized counties. (Acts of 1879, p. 141.)

Art. 5139. The comptroller of the state is authorized, empowered and required to assess and collect the state taxes on all lands in this state which are situated in unorganized counties thereof, and owned by non-residents thereof, in the manner hereinafter provided.

Duties of comptroller in relation thereto.
Ib. §2.

Art. 5140. The comptroller may at any time prior to the return of the assessment rolls to his office of the organized county to which such unorganized county or counties are attached for judicial purposes, receive the assessment of and collect the taxes on any lands situated in such unorganized county or counties which are owned by non-residents thereof.

Same.
Ib. §3.

Art. 5141. As soon as the tax rolls of the organized county to which unorganized counties are attached for judicial purposes shall have been received by the comptroller, he shall, by comparing the lands rendered to the assessor of the organized county by the residents of such unorganized county or counties with those previously rendered to him by non-residents, make out a list of all un-

Same.
Ib. §4.

rendered lands situated in such unorganized county, and place such value upon the lands thus found to be unrendered as he, as a sworn officer, may deem just and fair; provided, nothing in this law shall be so construed as to prevent the comptroller from receiving the assessment and taxes due at any time prior to the completion of the unrendered list of such unorganized county.

Same.
Ib. §5.

Art. 5142. After the completion of the unrendered list provided for in this chapter, the owner or owners must pay according to the value and assessment made thereon by the comptroller.

May appeal
from comp-
troller's as-
sessment.
Ib. §6.

Art. 5143. Assessment of lands rendered to the comptroller under the provisions of this chapter shall be made by the party rendering the same under oath as to their value; but if the comptroller thinks the valuation too low he shall object, and if the comptroller and the party rendering the land cannot agree, then the comptroller shall assess the same at such value as he as a sworn officer may think it is worth; and if the party rendering feels that the assessment is too high he may appeal to the board of equalization, which for such purposes shall consist of the governor, attorney general and the secretary of state, and their decision shall be final.

May levy upon
and sell, when.
Ib. §7.

Art. 5144. Three months after the completion of the unrendered list of each unorganized county respectively the comptroller shall proceed to levy upon and advertise all lands in such counties upon which the taxes are due and unpaid, giving notice of the amount due upon each separate tract of land, and giving such description of the land upon which taxes are due and unpaid as he may be in possession of; such notice to be given by publication in some weekly newspaper published in the state for four consecutive weeks; said notice to state that on a certain day therein named the comptroller will proceed to sell the land therein described, or so much thereof as may be necessary to pay the state and county taxes due, and the cost of advertising the same.

Sale.
Ib. §8.

Art. 5145. The sale shall commence on the day named in said notice, and may continue from day to day (Sundays and legal holidays excepted) until completed; such sale shall be had in front of the comptroller's office, in the city of Austin, between the hours of eight o'clock a. m. and four o'clock p. m. of each day.

May be bought
by state, when.
Ib. §9.

Art. 5146. Should there be no purchaser of said lands, then the comptroller shall bid the same in to the state for the taxes due thereon and the costs of sale, and make a deed to the state to the same, including in one deed all lands bid in for the state or any one else.

Redemption.
Ib. §10.

Art. 5147. Should the lands bid in by the comptroller for the state not be redeemed by the owner thereof or his agent within two years, by the party redeeming the same paying double the amount for which the said land was sold, then the said lands thus sold and unredeemed 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 public free school fund are to be sold and disposed of by law.

Tax deed.
Ib. §11.

Art. 5148. The comptroller shall give to the purchaser of any lands the sale of which is provided for in this chapter a deed to the same, giving in such deed such description of the land as may be necessary to identify the same, or such description as he may be in possession of.

List of pur-
chasers to be
kept in office.
Ib. §12.

Art. 5149. The comptroller shall keep a list of the purchaser or purchasers of all such lands in his office, showing the name and post-office of the purchaser or purchasers, together with the amount and

description of the land sold and the amount for which it was sold, and the date of sale.

Art. 5150. The deed given to the purchaser or purchasers by the comptroller under the provisions of this chapter shall vest a good and sufficient fee simple title in the purchaser or purchasers, subject to be impeached only for actual fraud; provided, the former owner or owners thereof do not redeem the same within two years from the date of the deed, either by paying to the purchaser or purchasers double the amount for which said land was sold, or by making a tender of the same to him or his agent, or by depositing with the comptroller before the expiration of the two years double the amount for which such land was sold, to be paid by the comptroller, when called upon, to the purchaser or purchasers thereof.

Deed shall vest good title when.
Ib. §13.

Art. 5151. All county taxes collected under the provisions of article 5147 shall be paid into the county treasury of the organized county to which the unorganized county is attached for judicial purposes.

County taxes to be paid, when.
Ib. §14.

Art. 5152. All county taxes due unorganized counties collected by the comptroller shall be kept by him to the credit of such unorganized county until the same shall have been organized; then he shall, upon the demand of the treasurer of the former unorganized county, pay the same over to said treasurer.

Comptroller to keep taxes of unorganized counties.
Ib. §15.

Art. 5153. All money received by the comptroller on deposit for the redemption of land sold and bought by individuals shall be by him deposited in the state treasury as a special deposit, subject to the order of the party to whom the conditional deed to such land was given. So also shall all county taxes collected by the comptroller under the provisions of this law be deposited in the state treasury as a special fund, subject to the order of the comptroller, to be paid to the county treasurers as provided in this chapter.

Special deposit to be made by comptroller.
Ib. §16.

CHAPTER FOUR.

OF THE COLLECTION OF TAXES—ELECTION AND QUALIFICATION OF THE COLLECTOR.

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Election and term of collector. (Const., art. 8, §16.) (Act Aug. 21, 1876, p. 259, §1.)

Article 5154. [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.

Vacancies, how filled. Ib.

Art. 5155. [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.

Sheriff a collector, when. (Const., art. 8, §16.) Ib. §2.

Art. 5156. [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.

Bond and oath. Ib. §3.

Art. 5157. [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 unincumbered 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 bonds, 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.

Art. 5158. [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.
Ib.

Art. 5159. [4734] Collectors 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 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.
Ib. p. 260, §4.

Art. 5160. [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. 5161. [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.
Ib. §9.

Art. 5162. [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.
Ib. §5.

Art. 5163. [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, poorhouse 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.
Ib. §6.

Art. 5164. [4739] The collector of taxes of each county shall begin the collection of taxes annually on the first day of October, or so

Collections,
when to begin.
Ib. §7.

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.

Shall keep office at county site. (Acts of 1887, p. 127.)

Art. 5165. [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 December of the same year for which the assessment is made.

Tax receipt and its requisites. (Acts of 1876, p. 261, §10.)

Art. 5166. [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; requisites of: duties of collector. (Acts of 1893, p. 90.)

Art. 5167. [4742] 1. At the end of each month the collector of taxes shall, on forms to be furnished by the comptroller of public accounts, make an itemized report under oath to the comptroller, showing each and every item of ad valorem, poll and occupation taxes collected by him during said month, accompanied by a summarized statement showing full disposition of all state taxes collected.

2. He shall present such report, together with the tax receipt stubs, to the county clerk, who shall, within two days, compare said report with said stubs, and if same agree in every particular as regards names, dates, and amounts, he (the clerk) shall certify to its correctness, for which examination and certificate he shall be paid by the commissioners' court twenty-five cents for each certificate and twenty-five cents for each two hundred tax payers on said report.

3. The collector of taxes shall then immediately forward his reports so certified to the comptroller, and shall pay over to the state treasurer all moneys collected by him for the state during said month, excepting such amounts as he is allowed by law to pay in his

county, reserving only his commissions on the total amount collected; and to enable him to do so he may, at his own risk, send the same to the state treasurer at the least cost to the state, on which he shall be allowed credit by the comptroller upon filing receipts showing actual amount of exchange paid; provided, that the state treasurer shall accept no payment other than money orders or direct cash payments, which may be made through express companies, banks, or any other source. The state treasurer whenever he may receive a remittance from a collector of taxes shall promptly pay the money so remitted to the state treasury, on the deposit warrant of the comptroller, and the money when so deposited shall be a credit to the said collector of taxes.

4. The collector of taxes shall pay over to the state treasurer all balances in his hands belonging to the state, and finally adjust and settle his account with the comptroller on or before the first day of May of each year; and to enable him to do so, the commissioners' court shall convene on or before the third Monday in April for the purpose of examining and approving his final settlement papers.

5. The allowance of a delinquent and insolvent list to the collector, in accordance with article 5170, 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 thereon, after it is allowed by the commissioners' court, and he shall issue special tax receipts therefor, to be furnished by the comptroller, which blank receipts shall be numbered and charged to the collector, who shall account for same at his next annual settlement, in the same manner as occupation tax receipts; he shall also make itemized monthly reports of such collections, using special blanks for that purpose.

6. To enforce the prompt and speedy collection and remittance of taxes, and to provide for the proper accounting of same, the comptroller shall prescribe and furnish the forms to be used by collectors of taxes, and the mode and manner of keeping and stating their accounts, and shall adopt such regulations as he may deem necessary in regard thereto. It shall be his imperative duty to enforce a strict observance of all the provisions of these articles.

7. It shall be the duty of the comptroller to notify the district attorney of the district, or the county attorney of the county in which the collector resides, and the sureties on the bond of the collector, of any failure to comply with any of the provisions of this article.

Art. 5168. [4743] 1. The collector of taxes shall at the end of each month make like reports to the commissioners' court of all the collections made for the county, conforming as far as applicable and in like manner to the requirements as to the collection and report of taxes collected for the state. The county clerk shall likewise, within two days after the presentation of said report by the collector, examine said report and stubs, and certify to their correctness as regards names, dates and amounts, for which examination and certificate he shall be paid by the collector of taxes fifty cents each month, which amount shall be allowed to the collector by the commissioners' court.

Duties of clerk
and collector.
1b.

2. The clerk shall file said report intended for the commissioners' court, together with the tax receipt stubs, in his office for the next regular meeting of the commissioners' court.

3. The collector of taxes shall immediately pay over to the county treasurer all taxes collected for the county during said month,

after reserving his commissions for collecting the same, and take receipts therefor, and file with the county clerk.

4. At the next regular meeting of the commissioners' court, the collector of taxes shall appear before said court and make a summarized statement, showing the disposition of all moneys, both of the state and county, collected by him during the previous three months. Said statement must show that all taxes due the state have been promptly remitted to the state treasury at the end of each month, and all taxes due the county have been paid over promptly to the county treasurer, and shall file proper vouchers and receipts showing same.

5. The commissioners' court shall examine such statement and vouchers, together with the itemized report and tax receipt stubs filed each month, and shall compare the same with the tax rolls and tax receipt stubs. If found correct in every particular, and if the collector of taxes has properly accounted for all taxes collected, as provided above, the commissioners' court shall enter an order approving said report, and the order approving same shall be recorded in the minutes, as other proceedings of said court.

6. The collector of taxes shall finally adjust and settle his account with the commissioners' court for the county taxes collected, at the same time and in the same manner as is provided in the foregoing article in his settlement with the state.

Report not to
be approved
unless.
(Acts of 1893,
p. 90.)

Art. 5169. [4743a] If any collector of taxes shall have failed at the end of each month, or within three days thereof, to promptly remit to the state treasurer the amount due by him to the state, or pay over to the county treasurer the amount due by him to the county, the commissioners' court, at the next regular meeting, shall ascertain the facts, and if the collector of taxes fails or refuses to pay or remit the same and file proper vouchers therefor, as provided in the foregoing article, the commissioners' court shall not approve his reports and accounts, but shall ascertain the amounts due by him, both to the state and county, and enter an order requiring him to pay the same to the proper treasurers, as is provided in articles 5210 and 5211, of the Revised Statutes, and notify such collector, as is provided for in article 4769a, section 3, under penalty for failure to do so, in section 4 of said article.

Whenever the collector of taxes shall fail or refuse to remit to the state treasurer the amounts due the state, when requested, the comptroller shall notify him under article 4769a, sections 3, 4, 5 and 7.

[Note.—Article 4769a, referred to in the acts of 1893, is the act of July 2, 1879, and so numbered in Sayles' Texas Civil Statutes, to which evidently reference was had. The first three sections are articles 5210, 5211 and 5212 of this revision, and sections 4, 5, 6 and 7 are the supplemental sections of article 104 of the Penal Code.]

List of delinquents and insolvents to be made out.
Ib.

Art. 5170. [4744] The collector of taxes shall make out on forms, to be furnished for that purpose by the comptroller of public accounts, between April 1 and 15 of each year, 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, in separate columns, and he shall post one copy of these de

linquent or insolvent lists at the court house door of the county, and one list at the court house door, or where court is usually held, in each justice precinct 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.

Art. 5171. [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. 282, 513.

Art. 5172. Non-residents of counties, owing state or county taxes, are hereby authorized to pay the same to the comptroller of public accounts; provided, that all taxes due by said non-residents shall be paid at the comptroller's office on or before the first day of January next after the assessment of such taxes; provided further, that the collectors of taxes shall be entitled to the commissions on all moneys paid by non-residents to the comptroller of public accounts, due their counties respectively.

Non-residents.
(Acts of 1879,
p. 41.)

Art. 5173. [4746] If any person shall fail or refuse to pay the taxes imposed upon him or his property by law, until the first day of January 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 as may be sufficient to pay his taxes, together with all costs accruing thereon; provided, there shall be no levy on property when the owner thereof has the right to pay at the comptroller's office, until a list of the persons who have paid their taxes at said office has been furnished the collector of taxes by the comptroller. The comptroller shall forward said list of paid taxes on or before the first day of February of each year, and the tax collector shall, immediately on receipt of said list from the comptroller, levy on and sell the property of such non-residents as have not paid their taxes, in accordance with the law regulating the sale of property for taxes.

Forced collections to begin, when.
(Acts of 1887,
p. 127.)

Art. 5174. [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 January 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.

Personal property may be pointed out.
Ib.

Art. 5175. [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

When property about to be removed from county.
Ib.

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 January next succeeding.

Tax lien superior to assignment, attachment, inheritance or devise, except. (Report joint committee, 1895, No. 111, Sen. Jour., p. 486.)

Art. 5175a. In all cases where a taxpayer makes an assignment of his property for the payment of his debts, or where his property is levied upon by creditors, by writs of attachment or otherwise, or where the estate of a decedent is or becomes insolvent, and the taxes assessed against such person or party, or against any of his estate, remains unpaid in part or in whole, the amount of such unpaid taxes shall be a first lien upon all such property; provided, that when taxes are due by an estate of a deceased person, the lien herein provided for shall be subject to the allowances to widows and minors, funeral expenses, and expenses of last sickness; and such unpaid taxes shall be paid by the assignee, when said property has been assigned, by the sheriff out of the proceeds of sale in case such property has been seized under attachment or other writ, and by the administrator or other legal representative of decedents, and if said taxes shall not be paid, all said property may be levied on by the tax collector and sold for such taxes in whomsoever's hands it may be found.

All property liable for taxes. (Acts of 1879, p. 46.)

Art. 5176. 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.

Sales of property, how made. (Acts of 1876, p. 259, §15.)

Art. 5177. [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 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. 5178. [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. 5179. [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, situated 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.

Advertisements of real property for sale, etc. (Acts of 1881, p. 15.)

Art. 5180. [4752] In making sales of real property for taxes the collector shall advertise the same for sale in some newspaper published in the county where the land is to be sold, for three successive weeks, if there be one, and the publisher of such newspaper

shall receive as compensation not exceeding twenty-five cents for each tract or parcel of land so advertised, to be taxed as other costs of sale against such land; provided, the cost of advertising in a newspaper shall be deducted from the fees allowed the collector for advertising; and provided, that the comptroller shall allow the collector twenty-five cents per tract for each tract of land bid off by the state; and if there be no newspaper published in the county, or there being a newspaper published in the county, and the publisher thereof refuses to publish the advertisement at the price herein fixed, then advertisement shall be made by posting the same for thirty days previous to the day of sale, 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 rolls 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.

Art. 5181. 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.

List to be posted.
(Acts of 1879, S. S., p. 46.)

Art. 5182. [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 the payment of the purchase money, and if the same is not paid before the completion of the tax sales, the collector shall resell the property, and continue such sale until the same is complete.

May be continued from day to day.
(Acts of 1876, p. 289.)

Art. 5183. [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.

Homesteads liable only for their own taxes.
Ib.

Art. 5184. [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.

Sales of land, how made.
Ib. p. 263, §17.

Art. 5185. [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 tax deed and its requisites.
(Const., art. 8, §13.)
Ib. §18.

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 5187, all the right and interest which the former owner had therein at the time when the assessment was made.

Sales to be reported to commissioners' court.
Ib.

Art. 5186. [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.

Redemption of land sold for taxes.
Ib. §19.

Art. 5187. [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 from private purchasers.
(Acts of 1879, S. S., p. 29.)

Art. 5188. Any person having the right to redeem any land sold at tax sale may do so by payment, within the time prescribed by law, to the collector of taxes of the county in which the said land was sold, of the amount which the law requires to be paid; provided, that the owner of said land, or his agent, shall first have made affidavit before some officer authorized by law to administer oaths, that he has made diligent search in the county where said land is situated for the purchaser thereof at the tax sale, and has failed to find him; or that the purchaser at such tax sale is not a resident of the county in which the land is situated, or that he and the purchaser can not agree on the amount of redemption money. In such cases only shall the owner or agent be authorized to redeem the same by the payment to the collector of taxes.

Receipt of collector notice, when.
Ib. §2.

Art. 5189. It shall be the duty of any collector of taxes, to whom payment is made under the provisions of this chapter, to give a receipt therefor, signed by him officially, in the presence of two witnesses, which said receipt, when duly recorded, shall be notice to all persons that the land therein described has been redeemed; and the collector of taxes shall, on demand, pay over to the purchaser at said tax sale the money thus received by him.

Relief, when.
(Acts of 1881, p. 107.)

Art. 5190. Any person whose land has been rendered for taxation, whether the same was rendered in the name of the original grantee or not, and has also been placed upon the unrendered rolls for the same year, shall be entitled to relief upon complying with the requirements hereinafter indicated.

Same.
(Acts of 1881, p. 107, §2.)

Art. 5191. If any such lands shall have been sold for the taxes charged upon the unrendered rolls, and bought by the state, the owner thereof, his agent or attorney, shall present to the tax collector of the county in which the land is situated a sworn statement to the effect that the same land has been rendered for taxation, and placed upon the regular assessment rolls for the year mentioned. Said affidavit shall contain an accurate description of the land, and be accompanied with the certificate of the assessor that the same is true and correct; and the tax collector shall thereupon present such

person with a written statement, officially signed, that said tax has been cancelled, and make a note of the same upon the unrendered rolls; provided, the provisions of this article shall apply to such lands at any time after the collector shall receive the rolls until the same shall have gone into the hands of a private purchaser; and if the owner shall have paid the taxes charged upon the unrendered rolls at any time previous he shall be entitled to the warrant of the comptroller for the amount so paid, in the same manner as is provided in article 5192 of this chapter, in cases of redemption from individual purchasers; provided further, that the tax collector shall make no charge whatever for the duties herein mentioned.

Art. 5192. When the owner of such lands shall have redeemed the same from a private purchaser it shall be the duty of the tax collector to furnish him a certificate to that effect; and upon presentation of said certificate to the comptroller, the comptroller shall issue to him a warrant upon the treasury of the state for the amount of such tax. This warrant shall be receivable for all taxes to the state. For issuing the certificate provided for in this article the tax collector shall be allowed the sum of fifty cents, to be paid by the applicant.

Certificate of redemption from collector. Ib. §3.

Art. 5193. [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, when. (Acts of 1879, S. S. p. 36, §1.)

Art. 5194. 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 execute a receipt to such owner, or agents, giving therein the amount of money received, and a description of the land 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.

May redeem, how. Ib. §2.

Art. 5195. In case said land shall not have been redeemed as provided in article 5194, then the same may be sold as provided by article 5193.

If not redeemed. Ib. §3.

Art. 5196. The owner of real estate which has been bought in by the state for taxes, his heirs or assigns may redeem the same at any time prior to the sale thereof, by the payment to the collector of the county in which such real estate is situated, or to the comptroller if in an unorganized county, of the amount designated by the

May redeem by paying costs, etc. Ib. §7.

comptroller as due thereon with costs of advertisement; and provided further, that if it shall at any time appear to the satisfaction of the comptroller that any land has been sold to the state for taxes which have been paid, or that the sale has not been made in accordance with the law authorizing the sale of land for taxes, he shall, upon the payment of the amount that may be due thereon, cancel such sale, and in all cases he shall deliver to the owner of the land, or his agent, a certificate under seal of his department, setting forth the fact that such land has been redeemed or that such sale has been cancelled, which certificate shall release the interest of the state, and the same may be recorded in the proper county as other conveyances of real estate are recorded.

Commissioners' court to sit as a board of inquiry, when. (Acts of 1889, p. 31.)

Art. 5197. The commissioners' courts of the several counties in this state shall, at the regular terms of said courts, sit as a court of inquiry in cases where land has been erroneously rendered for taxes; and any land owner whose land has been or may be sold to the state for taxes may appear before said court in person or by proxy and show to the satisfaction of a majority of said court that the taxes for which his or her lands have been sold have been paid, although the same was rendered in an incorrect abstract number or survey or original grantee; thereupon said commissioners' court shall issue to the said land owner a certificate setting forth fully said facts, which certificate shall be signed officially by the county judge of said county; and upon the presentation of said certificate to the comptroller of public accounts he shall execute and deliver to said land owner a valid deed relinquishing all the right, title and interest the state may have acquired in and to said land by reason of such tax sale.

Tax sales of towns and cities. (Acts of 1876, p. 259, §20.)

Art. 5198. [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.

[Note.—Articles 5199 (4761), 5200 (4762), 5201 (4763), 5203 (4764), 5204 (4765), and 5205 (4766) were repealed by the act of 1893, p. 93.]

Collector to file complaint, when. (Acts of 1887, p. 127.)

Art. 5202. It shall be the duty of the tax collector to make an affidavit before any justice of the peace against any person, firm or association of persons engaged in or pursuing any occupation on which, under the laws of this state, a tax is imposed, who fails or refuses to pay the same.

Compensation. (Acts of 1883, p. 101, §1.)

Art. 5206. [4767] There shall be paid for the collection of taxes as compensation for the services of the collector, beginning with the first day of September of each year, five per cent on the first ten thousand dollars of taxes collected, and four per cent on the next ten thousand dollars collected for the state, and one and one-quarter per cent on all collections over that sum; for collecting the county taxes, five per cent on the first five thousand dollars of such taxes collected, and four per cent on the next five thousand dollars collected, and two per cent on all such taxes collected over that sum; and in counties owing subsidies to railroads, the collector shall receive only one per cent for collecting such railroad tax, and in case where property is levied on and sold for taxes he shall receive the

same compensation as allowed by law to sheriffs or constables upon making a levy and sale in similar cases, but in no case to include commissions on such sales.

Art. 5207. And on all occupations and license taxes collected, five per cent.

For occupation tax.
Ib. §2.

Art. 5208. [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. 5209. [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.)

Art. 5210. 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.

Payments of moneys.
(Acts of 1879, S. S., p. 5.)

Art. 5211. All tax collectors and other officers or appointees authorized to receive public moneys shall account for all moneys in their hands belonging to their respective counties, cities or towns, and pay the same over to the respective county treasurers or city treasurers, whenever and as often as they may be directed so to do by the respective county judges, or county commissioners' courts, or mayor or board of aldermen; provided, that tax collectors shall have ten days from the date of such direction within which to comply with the same.

Same.
Ib. §2.

Art. 5212. The notification and direction provided for in the two preceding articles may be verbal, written, or by telegram; and if written or by telegram, proof of the deposit in the postoffice 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.

Notification to pay, etc.
Ib. §3.

Art. 5212a. Hereafter it shall be the duty of the district or county attorney of the respective counties of this state, by order of the commissioners' court, to institute suit in the name of the state for the recovery of all money due the state and county as taxes due and unpaid on unrendered personal property; and in all suits where judgments are obtained under this act the person owning the property on which there are taxes due the state and county shall be liable for all costs; provided, such suits may be brought for all taxes so due and unpaid for which such delinquent tax payer may be in arrears for and since the year 1886; and provided further, the state and county shall be exempt from liability for any costs growing out of such action; provided, all suits brought under this article for the recovery of taxes due on personal property shall be brought against the person or persons who owned the property at the time

Duty of district and county attorneys to sue for taxes on personal property.
(Report joint committee, Sen. Jour., 1895, p. 486, No. 113.)

such property should have been listed or assessed for taxation; provided, that no suit shall be brought until after demand is made by the collector for taxes due; and provided further, that no suit shall be brought for an amount less than twenty-five dollars.

Limitation not available to delinquent tax-payer. (Acts of 1895, S. S.)

Art. 5212b. No delinquent tax payer shall have the right to plead in any court or in any manner rely upon any statute of limitation by way of defense against the payment of any taxes due from him or her either to the state or any county, city or state.

CHAPTER FIVE.

OF THE ASSESSMENT AND COLLECTION OF BACK TAXES ON UNRENDERED LANDS.

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Back taxes on unrendered lands. (Act Aug. 19, 1876, p. 214, §1.)

Article 5213. [4770] In all cases where lands or real estate have not been assessed for taxation 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. 5214. [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. 5215. [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.

The board to value such lands. Ib. §3.

Art. 5216. [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.

And cause three rolls to be made. Ib. §4.

Art. 5217. [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.

Collector to give notice. Ib. p. 215, §5.

Art. 5218. [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.

Art. 5219. [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. 5220. 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.

Comptroller to make out list of lands sold to state, etc. (Acts of 1879, p. 79, §1.)

Art. 5221. It shall be the duty of each collector of taxes, within ninety days after receipt of said list, to call to his aid the county surveyor of his county, and, near as may be, ascertain if any lands contained in said list do not in fact exist in said county, or are embraced in other surveys conflicting therewith, and upon which the taxes have been paid, and after deducting the same from said list, he shall proceed to sell each tract of land therein described, whether belonging to residents or non-residents, for the payment of such sums of money as may be designated on said list as due thereon, together with all costs that may accrue in advertising and selling the same as herein provided.

Sale, when and how made.
Ib. §2.

Art. 5222. The collector of taxes shall, prior to the sale of any real estate that has been previously bid off to the state at tax sales, the owners of which have failed to redeem the same, advertise the real estate to be sold in some newspaper published in the county for six successive weeks, if there be such newspaper published therein, otherwise he shall post advertisements of said sale at the court house door and at one public place in each justice's precinct of his county for at least six weeks, giving in said advertisement, whether published or posted, such description of the lands to be sold as shall be given on the comptroller's list, and stating the time, place and terms of sale, which shall be between legal hours on the first Tuesday of some specified month at the court house door at public outcry, to the highest bidder for cash; provided, that no real estate shall in any case be sold for less than the amount designated by the comptroller as due thereon, together with all costs of advertisements and sale; and provided further, that no sales shall be made under the provisions of this chapter until six months after the same goes into effect; and provided further, that the former owner of any such real estate, his heirs or assigns, may redeem the same at any time prior to the sale thereof, by the payment to the collector of the county in which such real estate is situated, or to the comptroller, if in an unorganized county, of the amount designated by the comptroller as

Advertisement of sale and redemption by owner. (Acts of 1884, S. S., p. 31.)
Ib. §3.

due thereon, with costs of advertisement; and provided further, that if it shall at any time appear to the satisfaction of the comptroller that any land has been sold to the state for taxes which have been paid, or that the sale has not been made in accordance with the law authorizing the sale of land for taxes, he shall, upon the payment of the amount that may be due thereon, cancel such sale, and in all cases he shall deliver to the owner of the land, or his agent, a certificate under seal of his department, setting forth the fact that such land has been redeemed or that such sale has been cancelled, which certificate shall release the interest of the state, and the same may be recorded in the proper county as other conveyances of real estate are recorded.

Land sold,
how.
(Acts of 1879,
p. 79, §4.)

Art. 5223. At the time and place appointed for said sale the collector of taxes shall offer for sale each separate parcel of the real estate advertised, and shall sell the same to the bidder who will offer the largest amount of money therefor.

Sale may be
continued, etc.
Ib. §5.

Art. 5224. If the sale of the real estate advertised as provided herein shall not be completed on the day it is commenced, said sale may be continued for ten consecutive days, from day to day, by announcement of the tax collector to that effect, and the said collector may, if there be on any day a less number than three bidders present, adjourn said sale to the first Tuesday in the following month.

Deed executed,
when and how.
Ib. §6.

Art. 5225. When a sale has been made of any real estate as herein provided, the collector of taxes, upon payment of the amount bid for the same, shall make, execute and deliver to the purchaser a deed for such real estate, specifying in said deed the cause and date of sale, the number of acres sold, if the same can be ascertained, the name of the person, firm, corporation or company in whose name the land was assessed, and all such descriptive information as may be necessary to identify the property conveyed; provided, that the purchaser may, after payment, as described in this article, ask a delay of sixty days within which to have said real estate surveyed by the county surveyor, said survey to be made at the expense of the purchaser, and, upon a certificate from the collector directed to the surveyor that the person named in the certificate has purchased and paid for the same, not to exceed one dollar for each survey, to be paid for out of the sale of such survey.

Same.
Ib. §7.

Art. 5226. When a survey has been made, as provided in the preceding article, and a copy of the field notes, certified to as true and correct by the county surveyor, filed with the collector of taxes, the said collector shall thereupon make, execute and deliver to the purchaser a deed to said real estate, which deed shall, in addition to the requisite hereinbefore named, contain the field-notes certified by the county surveyor.

Effect of deed,
etc.
Ib. §8.

Art. 5227. Deeds made, executed and delivered by collectors of taxes under the authority of this chapter shall be held to vest a good and perfect title to the real estate therein described in the purchaser, and may be impeached only by frauds; provided, that the former owner shall have two years from the date of said deed to redeem the same by paying to the purchaser double the amount paid for said land by the purchaser at such sale, together with all subsequent taxes paid by the purchaser, with eight per cent interest on the amount of such subsequent taxes.

Report of
sales.
Ib. §9.

Art. 5228. Within thirty days after sales made under the provisions of this chapter, the collector of taxes shall make a report

to the commissioners' court of his county, and also to the comptroller of public accounts, giving in said reports such description of the real estate sold as is given in the comptroller's list, and stating the amounts due the state, county and collector respectively, and the amount for which said land was sold, and the name of the party to whom each tract was sold.

Art. 5229. Collectors of taxes shall, within sixty days after payments for real estate sold under the provisions of this chapter, after deducting from the proceeds of sale all costs due to them or their predecessors in said office, pay into the county treasury of the county in which said real estate is situated the amount of taxes shown by the comptroller's list to be due to said county, and the balance of said proceeds shall be paid by him into the treasury of the state within the said sixty days, in such manner as may be directed by the comptroller of public accounts.

Proceeds of
sale paid to
whom.
Ib. §10.

Art. 5230. Taxes collected by state or county, by sales made under the provisions of this chapter, shall be placed to the credit of the different funds for which originally assessed under the direction respectively of the comptroller of public accounts and the commissioners' court of the county in which the sale is made; the balance of the proceeds, after satisfying all taxes, penalties and costs accrued, shall, under direction of the comptroller, be placed in the treasury of the state as a special tax sale fund, and be subject to be reclaimed by the owner or owners of the land on proof as required in case of escheated estates.

Collections
applied, how.
(Acts of 1884,
p. 31.)

Art. 5231. The collector of taxes shall be entitled to deduct and retain out of the proceeds of sale of each separate parcel of real estate sold, as hereinbefore provided—

Costs deduct-
ed by collect-
or, etc.
(Acts of 1879,
p. 79, §12.)

1. Such amount as may be designated in the comptroller's list as costs due thereon to the collector.

2. If the advertisement of sale is published in a newspaper, such a proportion of the actual amount paid for advertising as the number of acres in such separate parcel sold bears to the whole number of acres advertised; or if the advertisements are posted, the sum of one dollar.

3. Two dollars for every deed made, executed and delivered under the provisions of this chapter.

Art. 5232. If, after the expiration of ninety days after the receipt by the collector of taxes of the comptroller's list, any real estate described in said list shall remain unsold, it shall be the duty of the said collector to make separate reports of such fact to the commissioners' court of his county and the comptroller of public accounts respectively, and the said parcels of real estate shall be embraced in the next list furnished by the comptroller of public accounts to the collector of taxes.

Unsold land
reported to
comptroller.
Ib. §13.

CHAPTER FIVE A.

DELINQUENT TAXES.

	Article		Article
Land and improvements taxable.....	5232a	Sheriff to execute deeds.....	5232h
Delinquent taxes a lien on land.....	5232b	Attorneys for state; fees, etc.....	5232i
Comptroller to list delinquent lands.....	5232c	Assessors to list annually.....	5232j
County clerks to record delinquent tax lists	5232d	Law available to cities and towns.....	5232k
Delinquent tax list to be published.....	5232e	Exemptions from this chapter.....	5232l
Suits to foreclose liens.....	5232f	Terms of redemption before sale.....	5232m
Proceedings in such suits.....	5232g	Terms of redemption within two years.....	5232n

All land and improvements subject to taxation, (Acts of 1895, p. 50.)
 Delinquent taxes a lien on land.
 Ib.

Article 5232a. For the purposes of taxation real property shall include all lands within the state and all buildings and fixtures thereon and appertaining thereto, except such as are expressly exempted by law.

Art. 5232b. All lands or lots which have been returned delinquent or reported sold to the state, or to any city or town, for taxes due thereon since the first day of January, A. D. 1885, or which may hereafter be returned delinquent or reported sold to the state, or to any city or town, shall be subject to the provisions of this chapter, and said taxes shall remain a lien upon the said land, although the owner be unknown or though it be listed in the name of a person not the actual owner, and though the ownership be changed, the land may be sold under the judgment of the court for taxes, interest and costs due for any preceding year.

Lands delinquent to be listed by comptroller.
 Ib.

Art. 5232c. It shall be the duty of the comptroller of public accounts immediately upon the taking effect of this chapter to prepare a list of all lands, lots or parts of lots sold to the state for taxes since the first day of January, 1885, and which have not been redeemed in each of the counties of this state, and to record such lands in books to be called the "Delinquent Tax Records," and may show when the lands or lots were reported delinquent or sold to the state for taxes, also the name of the owner at the time of such sale or delinquency, the number of acres, the amount of taxes due when first sold, and the amount of tax levied against it for each year since it was first returned delinquent, as shown by the records of his office; and making up the list or lists contemplated by this law for each county the comptroller is hereby required to make corrections and supply omissions in the description of any real estate embraced in said list or lists, so that when the corrections are made and the omissions are supplied the description will be such as is given in the abstracts of all the titled, patented and located lands in the state of Texas, or, as required in article 5232i, such as may be furnished by the commissioner of the general land office, and the comptroller is further required, in bulk assessments, to apportion to each tract or lot of land separately its pro rata part of the entire tax, interest and cost. The list for each county when signed by the comptroller shall be prima facie evidence that all the requirements of the law have been complied with by the officers charged with any duty thereunder as to the regularity of listing, assessing and reporting same as delinquent or as sold to the state any real estate whatsoever. This "delinquent tax record" for each county shall be preserved by the comptroller in his department, and upon the completion of such "delinquent tax record" the comptroller shall cause a duplicate of same to be sent to the county clerk of

the county for which such "delinquent tax record" is made, or if unorganized, then of the county to which it is attached for judicial purposes, and may require of said county clerk a receipt for the same.

Art. 5232d. On receipt of such "delinquent tax record" from the comptroller containing a complete list of the lands or lots that have been reported delinquent or sold to the state for taxes for any year or number of years since January 1, 1885, and containing also the data and information mentioned in article 5232c, it shall be the duty of the county clerk of each of the counties of this state respectively to cause same to be recorded in a book in like manner as is prescribed to be done by the comptroller in article 5232c, which book shall be labeled the "Delinquent Tax Record of _____ County." The delinquent tax records shall be arranged alphabetically in each case as to the names of delinquents.

Delinquent
tax lists to be
recorded by
county clerks.
Ib.

Art. 5232e. Upon receipt of said "delinquent tax record" from the comptroller by the county clerk of any county in this state, it shall be his duty immediately to certify same to the county commissioners' court, and the commissioners' court shall cause the same to be published in some newspaper published in the county for three consecutive weeks, if a newspaper is published in the county, but if no newspaper is published in the county, such list may be published in a newspaper outside of the county, to be designated by the commissioners' court by contract duly entered into, and a publisher's fee of twenty-five cents shall be taxed against such tract or parcel of land so advertised, and the publishers shall receive such compensation as is provided by law for like services in other cases.

Delinquent
tax list to be
published.
Ib.

Art. 5232f. Twenty days after the publication of such notice, or as soon thereafter as practicable, the commissioners' court, or the county judge acting for said court, shall file a list of all lands so advertised for taxes due for any year or number of years, the tax on which remains unpaid, with the county clerk of the county in which such lands are located, or if unorganized, then with the county clerk of the county to which attached for judicial purposes, and are to be sold under the provisions of this chapter for the taxes, interest and costs, and shall cause suit to be filed in the name of the state of Texas in the district court for said county, or if unorganized, then in the district court of the county to which attached for judicial purposes, stating therein by apt reference to lists or schedules annexed thereto a description of all lands or lots in such county upon which taxes have remained unpaid for any year or number of years since the first day of January, 1885, and the total amount of such taxes, with interest computed thereon to the time fixed for the sale thereof, and shall pray for judgment for the payment of the several amounts so specified therein, and in default thereof that such lands be sold to satisfy said judgment for taxes, interest and costs, and for such other relief to which the state may be entitled under the law and the facts. The petition in such suit shall be signed by the attorney bringing the suit, and shall be verified by the affidavit of said attorney or the county judge to the effect that the averments contained in said petition are true to the best of the knowledge and belief of affiant, and the pleadings of the defendant, except those of law, shall be verified by like affidavit of the defendant, his agent or attorney.

Suits to fore-
close tax liens
on delinquent
lands.
Ib.

Art. 5232g. The proper persons shall be made parties defendant in such suit and shall be served with process and other pro-

Proceedings in
suits to fore-
close tax lien.

ceedings had therein as provided by law for suits of like character in the district courts of this state; and in case of foreclosure an order of sale shall issue and the land sold thereunder as in other cases of foreclosure; but if the defendant or his attorney shall at any time before the sale file with the sheriff or other officer in whose hands any such order of sale shall be placed a written request that the property described therein shall be divided and sold in less tracts than the whole, together with a description of said subdivisions, then such officer shall sell the land in said subdivisions as the defendant may request, and in such case shall only sell as many subdivisions, as near as may be, to satisfy the judgment, interest and costs, and after the payment of the taxes, costs and interest adjudged against it the remainder of the purchase price, if any, shall be paid by the sheriff to the clerk of the court out of which said execution or other final process issued, to be retained by him subject to the order of the court for the period of two years, after which time the court may order the same to be paid to the state treasurer, who shall hold same in trust to be paid to the owner against whom said taxes were assessed; provided, any one claiming the same shall make proof of his claim to the satisfaction of the state treasurer within ten years after the sale of said lands or lots, after which the same shall be governed by the law regulating escheats; provided, that no suit shall be brought to enforce such lien upon any lands that a sufficient description to identify the same can not first be had.

Sheriff to execute deeds.
Ib.

Art. 5232h. In all cases in which lands have been sold or may be sold for default in the payment of taxes it shall be lawful for the sheriff selling the same, or any of his successors in office, to make a deed or deeds to the purchaser or to any other person to whom the purchaser may direct the deed to be made, and any such deed shall be held in any court of law or equity in this state to vest a good and perfect title in the purchaser thereof, subject to be impeached only for actual fraud.

Attorneys to represent state; fees, etc.
Ib.

Art. 5232i. The county attorney shall represent the state and county in all suits against delinquent tax payers that are provided for in this chapter. In litigated cases additional counsel may be retained by the commissioners' court if they deem it necessary to do so whose compensation shall be such reasonable fee as may be agreed upon at the time of employment, but in no case shall the compensation for said county attorney be greater than five dollars for the first tract in one suit, and one dollar for each additional tract if more than one tract is embraced in same suit, recover taxes, interest and costs; provided, that in no case shall the state or county be liable for such fees, but in each case they shall be taxed as costs against the land to be sold under judgment for taxes and paid out of the proceeds of the sale of same after the taxes and interest due thereon to the state are paid. The sheriff shall be entitled to a fee of two dollars for selling, and making deed thereto, each tract or lot of land that he sells under judgment for taxes, which fee shall be taxed as costs in the suit, and the district clerk shall be entitled to a fee of three dollars in each case, to be taxed as costs of suit.

Assessor to list unpaid taxes annually, etc.
Ib.

Art. 5232j. The tax collector of each county shall make up a list of the lands and lots on the thirty-first day of March of each year on which the state and county taxes for the preceding year remain unpaid, and shall file a certified copy of said list with the county clerk of his county, and shall send one to the comptroller of public ac

counts. The county clerk and comptroller shall enter said list in the "delinquent tax record," as provided in article 5232c, immediately upon receipt of same from the tax collector. The commissioners' court shall examine such delinquent list, correct errors in same, if there be any, and cause the corrections to be made upon the "delinquent tax record" of the clerk's office, and notify the comptroller of such corrections made. When the delinquent list is corrected as provided for in this article, then such list shall be advertised as provided for in article 5232e, and after such advertisement suit shall be instituted against delinquents in the district court as above provided, and such list as furnished by the tax collector and corrected by the commissioners' court shall constitute prima facie evidence of the proper assessment of the real estate, and that the amounts charged against said real estate is a true and correct charge; provided, that the commissioners' court shall have the power in cases where lands delinquent for taxes for any year or years which have been subsequently subdivided and sold by the holder of such tracts of land at the time of delinquency, to pro rate the amount of delinquent or back tax among the holders of subdivisions, and on the payment of such pro rata by the holder of any subdivision he shall be released from any liability for the remainder of the delinquent tax due on the whole tract.

Art. 5232k. Any incorporated city or town or school district shall have the right to enforce the collection of delinquent taxes due it under the provisions of this chapter.

Law available to incorporated cities and towns.
Ib.

Art. 5232l. Real estate which may have been rendered for taxes and paid under erroneous descriptions given in assessment rolls, or lands that may have been doubly assessed and taxes paid on one assessment, or lands which may have been assessed in a county other than the one in which they are located, or lands which may have been sold to the state and upon which taxes have been paid and through error not credited in the assessment rolls, shall not be deemed subject to the provisions of this chapter. When called upon the commissioner of the general land office shall furnish the comptroller officially with such information as may be necessary to enable him to determine the validity or locality of such surveys and grants as have not been shown by the printed abstracts of the land office.

Exemptions from this chapter.

Art. 5232m. Any delinquent tax payer whose lands have been returned delinquent or reported sold to the state for taxes due thereon, or any one having an interest therein, may redeem the same at any time before his lands are sold under the provisions of this chapter by paying the taxes due thereon since January first, 1885, with interest at the rate of six per cent per annum and accrued costs of suit.

Delinquent owners may redeem before sale.
Ib.

Art. 5232n. Where lands are sold under the provisions of this chapter the owner or any one having an interest therein shall have the right to redeem said land, or his interest therein, within two years from the date of said sale upon the payment of double the amount paid for the land.

May redeem in two years by paying double.

CHAPTER SIX.

OF MUNICIPAL TAXES TO PAY SUBSIDIES IN AID OF RAILROADS AND OTHER INTERNAL IMPROVEMENTS.

	Article		Article
Such taxes, how applied.....	5233	To be paid over every month.....	5237
To be collected by city officers.....	5234	If insufficient, additional levy to be	
Bond of the officers.....	5235	made	5238
Taxes paid, in what.....	5236		

Such taxes, how applied. (Act Aug. 18, 1876, p. 174, §1.)

Article 5233. [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 controller, 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.

To be collected by city officers. Ib. §2.

Art. 5234. [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 used to enforce the assessment, collection and paying over 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. Ib. §3.

Art. 5235. [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 assessor shall be amenable and subject to all laws enacted to secure the honest and faithful performance of the duties of collectors of taxes.

Taxes may be paid in what. Ib. §4.

Art. 5236. [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. Ib. §5.

Art. 5237. [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. Ib. §6.

Art. 5238. [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.

CHAPTER SEVEN.

NEW COUNTIES.

	Article		Article
When new counties are created.....	5239	Compensation of collector.....	5242
Transcripts of unpaid assessments.....	5240	Compensation for transcribing rolls.....	5243
To be verified.....	5241		

Article 5239. Where any county now or hereafter created out of a part of any one or more organized counties, or when any unorganized county may be organized by the election and qualification of its officers, it shall be the duty of the person in charge of the assessor's roll in the county or counties from which such new county or any part of it has been taken, or to which such unorganized county has been attached for judicial purposes, to allow such person as the commissioners' court of the newly organized county may appoint for that purpose, access to the rolls for the purpose of making the transcripts hereinafter provided for.

When new counties are created, etc. (Acts of 1885, p. 107, §1.)

Art. 5240. It shall be the duty of the person so appointed to make from such assessor's rolls two transcripts of the unpaid assessments, both on person and property, in that portion of the county included within the limits of the new county, or, as the case may be, in the limits of the former unorganized county.

Transcripts of unpaid assessments. Ib. §2.

Art. 5241. The collector of the county from which such territory has been taken, or to which such unorganized county has been attached, shall examine and verify the transcripts herein provided for and attest their correctness over his official signature. For such service he shall receive twenty dollars from the county for which the transcript has been made, to be paid on the order of its commissioners' court. He shall also have the commissioners' court of his county to approve the transcript rolls, and shall deliver one of them to the collector of the new county; the other he shall forward to the comptroller, and, when received by the comptroller, it shall authorize him to give the proper credit to the collector of the old county and to charge the same to the collector of the new county.

To be verified. Ib. §3.

Art. 5242. The collector of such new county shall receive the same compensation, and shall have the same authority to collect and enforce the collection of the taxes found to be due by such transcripts as is enjoyed by the collectors of the other counties in this state.

Compensation of collector. Ib. §4.

Art. 5243. The person selected by the commissioners' court of the new county to make such transcripts shall receive for his services such compensation as he may agree on with such commissioners' court.

Compensation for transcribing rolls. Ib. §5.

CHAPTER EIGHT.

DISBURSEMENT OF THE DIRECT TAX.

	Article		Article
Claims against direct tax; how filed.....	5243a	Comptroller to allow claim and draw	5243c
Comptroller to audit claims.....	5243b	warrant, when	5243c
		Fee of county judge.....	5243d

Claims against the direct tax, how filed. (Acts of 1895, p. 30.)

Article 5243a. All claims against the direct tax, penalties, costs and interest refunded to the state of Texas in trust for those from whom the same was collected, or their legal representatives, under the act of the fifty-first congress, approved March 2, 1891, shall be filed under the direction of the governor, who shall cause a claim register to be kept by the comptroller of public accounts showing the counties in which and by whom the tax was paid, by whom the claim for reimbursement is made, the number of the claim and the date of the filing, the award of the comptroller, the name of the payee, the number, date and amount of the warrant. All claims now on file with the comptroller by virtue of previous laws or joint resolutions shall be considered as filed under this chapter, and no refiling thereof shall be necessary, and they shall be acted upon the same as if this chapter had been in force at the date of the filing thereof.

Comptroller to audit claims. (Acts of 1893, p. 28.)
Comptroller to allow claim and draw warrant, when.
Ib.

Art. 5243b. The comptroller of public accounts shall audit and pass upon the claims against the direct tax fund which may be made by those who paid the tax, or their legal representatives.

Art. 5243c. The comptroller shall allow such claims and draw his warrant in the name of the claimant, his surviving wife, or his or her legal representative, if any, on the state treasurer in payment of same when the genuineness thereof has been established in either of the following methods: First: When satisfactory proof has been made before him that the party applying is entitled thereto; and he is hereby authorized to administer such oaths as he may require in regard to the matter. Second: He shall, as soon as practicable, furnish a list of those who paid the tax and amounts paid to the county judge of each county wherein the tax was paid, to be filed in his office for inspection by those interested. In the manner to be designated by the comptroller, the county judge shall give notice of the receipt of the list. He shall at any time hear evidence as to the right of those making claim, and if the proof be satisfactory, he shall, under the seal of the county court, deliver to the claimant a certificate stating how the claim was established. In case where neither of the above rules can be applied, the comptroller may prescribe the rule.

Fee of county judge.
Ib.

Art. 5243d. The county judge shall be allowed the sum of twenty-five cents for each certificate, to be paid by the applicant.

CHAPTER NINE.

TAXATION OF INSURANCE, TELEPHONE, SLEEPING AND
DINING CAR AND OTHER CORPORATIONS.

Article	Article
Insurance companies taxed.....5243e	Franchise tax of corporations.....5243i
Telephone companies taxed.....5243f	Secretary of state to notify corporations.5243j
Sleeping car companies taxed.....5243g	Corporations exempt5243k
Capital stock of non-corporators subject.5243h	

Article 5243e. Every life, fire, marine, accident, or other insurance company at the time of its filing its annual statement shall report to the commissioner of insurance the gross amount of premiums received in this state during the preceding year, and each life insurance company and life and accident insurance company shall pay an annual tax of one and one-fourth per cent on such gross premium receipts; and each fire, marine, health, live stock guarantee, or accident insurance company shall pay an annual tax of one-half of one per cent on such gross premium receipts; and the gross premium receipts are understood to be the premium receipts reported to the commissioner of insurance by the insurance companies on sworn statements. Upon receipt by him of statements showing the gross premium receipts by such companies, the commissioner of insurance shall certify to the state treasurer the amount of taxes due by each company, which taxes shall be paid to the state treasurer for the use of the state on or before the first day of March following, whose receipt shall be evidence of the payment of such taxes; and no insurance company shall receive a permit to do business in this state until such taxes are paid; provided, that no occupation tax shall be levied on insurance companies by any county, city, or town, but this article shall not be construed to prohibit the levy of state, county and municipal taxes upon the real and personal property of such companies.

Insurance
companies
taxed.
(Acts of 1893,
p 156.)

Art. 5243f. There shall hereafter be collected from each telephone company an annual tax of twenty-five cents on each telephone in use by such company in this state; provided, that no occupation tax shall be levied on any telephone company by any county, city or town, but this article shall not be construed to prohibit the levy of state, county or municipal taxes upon the real and personal properties of such companies. Every such company shall, on or before the fifteenth day of January of each year, through its superintendent, or other chief officer or agent, make to the comptroller of public accounts a statement on oath showing the number of telephones in use in this state by such company, and the comptroller of public accounts shall certify to the state treasurer the amount of taxes due by such company, which taxes shall be paid to the state treasurer, for the use of the state, the amount of the taxes herein levied, and no telephone company shall do business in this state until said reports are filed and taxes paid. Any telephone company violating any provision of this article shall forfeit to the state, as a penalty, the sum of two hundred dollars, to be recovered in any court of competent jurisdiction on the complaint of the comptroller of public accounts.

Telephone
companies
taxed
Ib.

Sleeping car
companies
taxed.

Art. 5243g. Every sleeping car company, palace car company, dining car company doing business in this state, and every company, corporation, person, or association of persons leasing or renting cars to any railway company in this state, shall, annually, between the first day of January and the first day of March, report to the comptroller of public accounts, under oath of the president, treasurer, or some other officer of said corporation, as follows, viz.:

1. The total authorized capital stock.
2. The number of shares issued.
3. The number of shares authorized.
4. The par value of each share.
5. The number of miles of railroad in this state and other states over which its cars are hauled.

6. The number of miles of railroad in this state over which its cars are hauled, the total amount invested by said company in real estate, manufacturing plants, materials and properties other than sleeping, palace and dining cars and their equipments; and shall pay to the state treasurer, for the use of the state, a tax of twenty-five cents on the one hundred dollars of the capital stock of such company employed in this state; and in computing the amount of such capital stock so employed, the same shall be such proportion of the capital stock of such company, after deducting therefrom the amount shown to be invested in real estate, manufacturing plants, materials and properties, other than such sleeping, palace or dining cars and their equipments or properties used in connection with the operation of such cars, as the miles over which it runs cars in this state bear to the whole number of miles in this state and other states over which such cars are run; and in the event of the neglect or refusal of the officers of any such corporation to make the report herein required, the comptroller of public accounts and attorney-general, or either of them, are hereby authorized to make a valuation of the capital stock of such company, and ascertain any other necessary facts from any information in their hands or that they may be able to obtain, and shall calculate the taxes due by such company, and certify to the state treasurer the amount of taxes due by such company; and each and every such company failing or refusing for more than thirty days after the first day of March to make the report required herein and pay the required taxes shall forfeit to the state twenty-five dollars for each day said report and payment are delayed, which forfeiture, together with the taxes due, shall be sued for by the attorney-general in the name of the state. For the purpose of suits provided for in this article, venue and jurisdiction are hereby expressly conferred upon the courts of Travis county, and service may be had upon any officer or agent of such company within this state, and such service shall in all respects be held legal and valid, and no occupation taxes shall be levied upon such companies by any county, city or town. Nothing in this article shall be construed to relinquish the claim of the state to taxes now due under provisions of previous articles.

Capital stock
of non-corpor-
ators subject.
ib.

Art. 5243h. Whenever any person or association of persons, not being a corporation, nor having capital stock, shall in this state engage in the business mentioned in article 5243g, then the capital and property, or the certificates, or other evidences of the rights or interests of the holders thereof, in the business, or capital and property employed therein, shall be deemed and treated as the capital stock of such person or association of persons for the purpose

of taxation in like manner if such person or association of persons were a corporation; and such person or association of persons shall make to the comptroller of public accounts, at the time and in the manner required in article 5243g, such report as the comptroller of public accounts may require to carry out the provisions of this chapter relating to such person or association of persons; and such persons or association of persons shall be subject to all the penalties provided in article 5243g for failure to make the required reports and pay the required taxes.

Art. 5243i. Each and every private domestic corporation heretofore chartered or that may be hereafter chartered under the laws of this state, and each and every foreign corporation that has received or may hereafter receive a permit to do business under the laws of this state, in this state, shall pay to the secretary of state, annually, on or before the first day of May, a franchise tax of ten dollars. Any such corporation which shall fail to pay the tax provided for in this article shall, because of such failure, forfeit their charter.

Franchise tax of corporations.

Art. 5243j. The secretary of state shall, on or before the first day of March of each year, notify all corporations subject to the tax provided in the preceding article, and in thirty days after the first day of May of each year shall publish a list of the charters forfeited for non-compliance with this chapter; provided, that any corporation which shall within sixty days after such publication pay the tax and five dollars additional thereto shall be relieved from forfeiture of its charter by reason of such failure; provided further that this chapter shall not be construed to repeal any law prescribing fees to be collected by the secretary of state.

Secretary of state to notify corporations, etc.
Ib.

Art. 5243k. Corporations organized for the purpose of religious worship, or for holding places of burial, not for private profit, or for school purposes, or for purely public charity, are exempted from the tax imposed by this act.

Corporations exempt.
Ib.

CHAPTER TEN.

GENERAL PROVISIONS.

Article	Article
Tax to pay for land deeded to state.....5243l	Same credited to general county fund...5243o
Payment to grantors of such lands.....5243m	Time extended for redemption of land sold to state, etc., for taxes.....5243p
Repayment to counties of subsidy funds.5243n	

Article 5243l. The commissioners' court of any county in the state of Texas is hereby authorized and empowered to one time levy a tax not exceeding eight cents on the one hundred dollars ad valorem tax on all property subject to taxation in said county or counties, to pay for any lands deeded to the state of Texas heretofore or that may hereafter be deeded to the state of Texas for public purposes on which to erect public buildings by the state, and to be used by the state as state institutions for the insane.

Tax to pay for land deeded to state.
(Acts of 1893, p. 66.)

Art. 5243m. When any county commissioners' court, at any regular session thereof, shall hear and determine the justness of any such claim or claims for lands heretofore or that may hereafter be deeded to the state as sites for public institutions of the state, and the amount, at a fair valuation of such lands so deeded, such county commissioners' court is hereby authorized and empowered to levy

Payment to grantors of such lands.
Ib.

a tax for such purpose, not exceeding eight cents on the one hundred dollars worth of taxable property in such county or counties, to be levied and collected as other taxes are, which, when collected, shall be paid over to the party or parties deeding the land or lands to the state, upon vouchers duly made out and audited, as other claims are.

Repayment to
counties of ex-
cess of subsi-
dy funds.

Ib. p. 67.

Art. 5243n. Whenever it shall appear to the state treasurer that any money paid into the state treasury by any county of this state for the liquidation of subsidy bonds issued by such county, remains to the credit of such county after all of said subsidy bonds and interest have been paid, said state treasurer shall pay to the treasurer of such county such remaining sum, and the treasurer of such county shall receipt therefor.

Such fund to
go to credit of
general coun-
ty fund.

Ib.

Art. 5243o. The county treasurer of such county shall place such sum of money to the credit of the general fund of such county.

Time for re-
demption of
land sold at
tax sale to
state, etc., ex-
tended.

Ib. 101.

Art. 5243p. All lands which have been heretofore sold for taxes and bought in by the state or by cities and towns, and which have not been redeemed, may be redeemed by the owner thereof, or his agent or legal representative, if within twelve months from the date on which this law takes effect said owner or agent or legal representative, when he desires to redeem land from the state, shall pay to the state the original state and county taxes for which said lands were sold, and all costs, together with six per cent interest thereon and the taxes due each year since such sale, or from the day of the accrual of such subsequent taxes, as the case may be, under such rules and regulations as shall be prescribed by the comptroller of the state; and when he desires to redeem lands sold to any city or town, said owner, agent or representative shall pay to such city or town the original city or town tax for which said lands were sold, and all costs, together with six per cent interest thereon and the taxes due each year since said sale, or from the day of accrual of such taxes, as the case may be; provided, that the proportion of the redemption money due the county shall be remitted to the treasurer of the proper county by the comptroller.

TITLE CV.

Timber.

	Article	Article
Log brands	5244	Written report to be filed with county clerk, when.....
To be recorded.....	5245	Evidence of ownership, how proved.....
		5246 5247

Article 5244. Any person engaged in floating or rafting timber upon the waters of any river or creek of this state shall have a log brand with which to brand every log or stick that he may float or haul and put into the waters for sale or market, the same to be distinctly branded.

Log brands.
(Acts of 1879,
p. 81, §1.)

Art. 5245. He shall have said brand recorded in every county in which he cuts any of said timber, and in the county where he proposes to sell or market said timber, by the county clerk, in a book to be kept by said clerk for that purpose, for which said clerk shall receive a fee the same as is by law allowed for recording stock brands.

To be recorded.
Ib. §2.

Art. 5246. Any persons who float any logs or timber in this state shall, on the first day of April, first day of July, first day of September, and on the first day of January of each year, or within fifteen days of said dates, make a written report under oath showing the number of logs cut or floated during the next preceding three months, the survey or surveys of land from which they were cut or carried, and the number cut from each, and a description of the brand placed thereon, and shall file the same with the county clerk of the county in which the timber was cut, and such clerk shall record the same in a book kept for that purpose, and index it, and receive therefor the sum of fifty cents from the party presenting the same; provided, that this law shall not apply to pickets, posts, rails or firewood.

Written report
to be filed with
county clerk.
Ib. §3.

Art. 5247. A certificate, under the hand of the county clerk containing a description of a log brand and the name of the owner thereof, with a transfer on the back of it signed and acknowledged by such owner, or proved as other instruments for record, shall be prima facie evidence that the person to whom the transfer is made owns the logs described thereon.

Evidence of
ownership,
how proved.
Ib. §4.

TITLE CVI.

Trespass to Try Title.

CHAPTER ONE.

THE PLEADINGS AND PRACTICE.

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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.

Article 5248. [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. 5249. [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. 5250. [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. 5251. [4787] The plaintiff shall indorse on his petition that the action is brought as well to try the title as for damages.

Art. 5252. [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.

Warrantor, etc., may be made a party.

Art. 5253. [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 the same defense as if the suit had been originally commenced against him.

Landlord may become defendant.
Ib. §5.
P. D. 5296.

Art. 5254. [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.

The possessor shall be defendant.

Art. 5255. [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 join as defendants, whom.

Art. 5256. [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.

May file plea of "not guilty" only.
(Act Feb. 2, 1844.)
Ib. §5.
P. D. 5307.

Art. 5257. [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.

What proof may be made under such plea.
Ib.

Art. 5258. [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.

Answer taken as admitting possession.
(Act Feb. 5, 1840, §6.)
P. D. 5297.

Art. 5259. [4795] All certificates for headright, 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.

What is sufficient title, etc.
(Act Feb. 5, 1841, §23.)
P. D. 5303.

Art. 5260. [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.

Either party may demand abstract of title.

Art. 5261. [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 trial.

Abstract must be filed in 20 days, etc.

Art. 5262. [4798] The abstract mentioned in the two preceding articles shall state—

Abstract shall state, what.

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 its loss or destruction.

Amended abstract.

Art. 5263. [4799] The court may allow either party to file an amended abstract of titles, under the same rules which authorize 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. 5294.

Art. 5264. [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.

Survey unnecessary, when.
Ib. §6.
P. D. 5308.

Art. 5265. [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.

Common source of title, proof of. (Act Sept. 28, 1871, p. 3, §1.)
P. D. 6829.

Art. 5266. [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.

Judgment by default.

Art. 5267. [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.

Proof ex parte, when made.

Art. 5268. [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 its merits, the plaintiff shall make such proof as will entitle him prima facie to recover, whereupon the proper judgment shall be entered.

When defendant claims part only.

Art. 5269. [4805] Where the defendant claims part of the premises only, the answer shall be equivalent to a disclaimer of the balance.

When plaintiff proves part.

Art. 5270. [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.

May recover a part, etc., when.

Art. 5271. [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.

The judgment, etc.

Art. 5272. [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.

Art. 5273. [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 also be 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. 5274. [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.

Art. 5275. [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.

Final judgment conclusive.

Art. 5276. [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.

Former laws shall govern, when. Ib. §6. P. D. 5297.

CHAPTER TWO.

CLAIM FOR IMPROVEMENTS.

Article	Article
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Issues as to.....5278	Defendant failing to pay, etc., within six months, writ to issue.....5283
Rents and profits to be offset against.....5279	Judgment5284
Judgment for excess, etc.....5280	Duty of clerk receiving payment, etc.....5285
Writ of possession not to issue for a year, unless, etc.....5281	

Article 5277. [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.

Suggestion of improvements in good faith. (Act Feb. 5, 1840.) P. D. 5300.

Art. 5278. [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

Issue as to. Ib.

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. 5279. [4815] If the sum estimated for the improvements exceeds 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. 5280. [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.

Writ of possession not to issue, unless, etc.
(Act Feb. 5, 1840, §9.)
P. D. 5301.

Art. 5281. [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.

On failure of plaintiff, defendant may pay, etc., and keep premises.

Art. 5282. [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.

Defendant failing to pay, etc., within six months, writ may issue, etc.

Art. 5283. [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.

Art. 5284. [4820] The judgment or decree of the court shall re-
cite 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 ap-
plicable to the case before the court. Judgment.

Art. 5285. [4821] Whenever payment shall be made to the clerk
of the court by the plaintiff or defendant, as provided in the preced-
ing articles, it shall be the duty of such clerk to enter a memoran-
dum of such payment, with the date thereof, on the page of the rec-
ord on which the judgment was entered; and he shall, on demand,
pay over the money to the party entitled, taking his receipt there-
for, dated and signed on the page of the record aforesaid. Duty of clerk
on receiving
payment, etc.

TITLE CVII.

Trial of Right of Property.

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5286	when.....
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5287	Proceedings, how conducted.....
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when.....	
5299	

Claimant must make affidavit. (Act March 18, 1846, p. 140, §1.) P. D. 5310.

Article 5286. [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.

Bond. (Acts of 1887, p. 104.)

Art. 5287. [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; provided, however, that when more than one writ has been levied said bond may be made payable to all the plaintiffs in the several writs levied. Said bond shall inure to the benefit of all the plaintiffs in the several writs according to their respective priorities in time of levy. Upon the approval of such bond and delivery of the property to the claimant, the same shall be deemed in custodia legis, and shall not be taken out of his possession by any other like writ or writs, but said writs may be levied on the same by giving notice to the claimant, and in such cases the claimant's bond shall also inure to the benefit of the several plaintiffs in such writs according to their respective priorities.

Condition of bond.

Art. 5288. [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.

Art. 5289. [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. Property to be delivered to claimant. Ib.

Art. 5290. [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 said 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. Return of oath and bond. Ib. §2. P. D. 5311.

Art. 5291. [4827] The form of such bond shall be substantially as follows: Form of bond.

“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 plaintiff] 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 or 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. 5292. [4828] Any other form of bond which shall be a substantial compliance with the requirements of article 5291 shall be a sufficient bond. Form immaterial.

Art. 5293. [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 Return of oath, bond and copy of writ when levy made in county other than that where writ issued.

was made having jurisdiction according to the value of the property as assessed by said officer.

Return of original writ.

Art. 5294. [4830] The sheriff or other officer taking such 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.

Jurisdiction. (Const., art. 5, §§8, 16, 19.)

Art. 5295. [4831] Cases arising under this chapter shall be tried as follows:

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.

Cause, how docketed. (Act March 18, 1848, p. 140, §3.) P. D. 5312.

Art. 5296. [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.

Issue to be made up, etc. Ib.

Art. 5297. [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.

Requisites of issue.

Art. 5298. [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. 5299. [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. Ib.

Art. 5300. [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 nonsuited.

Proceedings, how conducted.

Art. 5301. [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. 5302. [4838] In all cases arising under this title, if the property was taken from the possession of the claimant, the burden or proof shall be on the plaintiff.

Burden of proof on defendant, when. Ib.

Art. 5303. [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. 5304. [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. 5305. [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.

Art. 5306. [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.

Copy of writ
evidence,
when.
P. D. 5315.

Art. 5307. [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. Such judgment shall be rendered in favor of the plaintiff in the writ, or of the several plaintiffs, if more than one, and shall fix the amount of each plaintiff's claim.

Judgment
upon failure
to establish
title, etc.
(Acts of 1887,
p. 104.)

Art. 5308. In case such judgment should not be satisfied by a return of the property as provided in article 5310, then execution shall issue thereon in the name of the plaintiff for the amount of his claim, or of all the plaintiffs for the sum of their several claims, provided the amount of such judgment exceed such claim or sum; and in such cases the excess of such judgment shall inure to the benefit of any person who shall show superior right or title to the property claimed as against the claimant; but if such judgment be for a less amount than the sum of the several plaintiffs' claims, then the respective rights and priorities of the several plaintiffs shall be fixed and adjusted in the judgment.

Execution
shall issue.
Ib.

Art. 5309. [4844] On such judgment no execution shall issue for ten days.

Execution not
to issue with-
in ten days.

Art. 5310. [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.

Return of
property by
claimant with-
in ten days.

Art. 5311. [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.

Claim operates
a release of
damages.
P. D. 5317.

Art. 5312. [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.

Levy may be
made on other
property.
P. D. 5318.

TITLE CVIII.

Trusts—Conspiracies Against Trade.

Article	Article		
Definition of "trusts".....	5313	Penalty for violation of this title.....	5318
Forfeiture of charter of corporation,		Contracts void, when.....	5319
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Duties of attorney-general in relation		Does not apply to agricultural products,	
thereto	5315	etc.	5321
Foreign corporations.....	5316	Compulsory process.....	5321a
Quo warranto proceedings, etc.....	5317		

Definition of trust.
(Acts of 1889; amend. 1895, p. 112.)

Article 5313. A trust is a combination of capital, skill, or acts by two or more persons, firms, corporations or associations of persons, or either two or more of them for either, any or all of the following purposes:

1. To create or carry out restrictions in trade or commerce or aids to commerce, or to create or carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this state.
2. To increase or reduce the price of merchandise, produce or commodities.
3. To prevent competition in manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or to prevent competition in aids to commerce.
4. To fix at any standard or figure, whereby its price to the public shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, use or consumption in this state.
5. To make or enter into or execute or carry out any contract, obligation or agreement of any kind or description by which they shall bind or have bound themselves not to sell, dispose of or transport any article or commodity, or article of trade, use, merchandise, commerce or consumption below a common standard figure, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graded figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or transportation of any such article or commodity that its price might in any manner be affected.

Forfeiture of charter of corporation, when.
Ib. §2;
Amend. Ib.

Art. 5314. Any corporation holding a charter under the laws of the state of Texas which shall violate any of the provisions of this chapter shall thereby forfeit its charter and franchise, and its corporate existence shall cease and determine.

Duties of attorney-general in relation thereto.
Ib. §3.
Amend. Ib.

Art. 5315. For a violation of any of the provisions of this chapter by any corporation mentioned herein, it shall be the duty of the attorney-general or district or county attorney, or either of them,

upon his own motion, and without leave or order of any court or judge, to institute suit or quo warranto proceedings in Travis county, at Austin, or at the county seat of any county in the state, where such corporation exists, does business or may have a domicile, for the forfeiture of its charter rights and franchise, and the dissolution of its corporate existence.

Art. 5316. Every foreign corporation violating any of the provisions of this chapter is hereby denied the right and prohibited from doing any business within this state, and it shall be the duty of the attorney-general to enforce this provision by injunction or other proper proceedings in the district court of Travis county, in the name of the state of Texas.

Foreign corporations.
Ib. §4.
Amend. Ib.

Art. 5317. The provisions of chapter 48, general laws of this state, approved July 9, 1879, to prescribe the remedy and regulate the proceedings by quo warranto, etc., shall, except in so far as they may conflict herewith, govern and control the proceedings when instituted to forfeit any charter under this chapter.

Quo warranto.
Ib. §5.
Amend. Ib.

[Note.—The act of 1879, referred to in the preceding article, is title XCIII. of this revision.]

Art. 5318. Each and every firm, person, corporation or association of persons who shall in any manner violate any of the provisions of this chapter shall for each and every day that such violation shall be committed or continued forfeit and pay the sum of fifty dollars, which may be recovered in the name of the state of Texas in any county where the offense is committed, or where either of the offenders reside, or in Travis county, and it shall be the duty of the attorney-general or the district or county attorney to prosecute for and recover the same.

Penalty for violation of this chapter.
Ib. §10.
Amend. Ib.

Art. 5319. Any contract or agreement in violation of the provisions of this act shall be absolutely void and not enforceable either in law or equity.

Contracts void.
Ib. §11.
Amend. Ib.

Art. 5320. The provisions hereof shall be held cumulative of each other and of all other laws in any way affecting them now in force in this state; provided, this chapter shall not be held to apply to livestock and agricultural products in the hands of the producer or raiser, nor shall it be understood or construed to prevent the organization of laborers for the purpose of maintaining any standard of wages.

Provisions cumulative.
Ib. §12.
Amend. Ib.

Art. 5321. Nothing in this chapter shall be held or construed to affect or destroy any rights which may have accrued, or to affect the right of the state to recover penalties, or to affect the right of the state to forfeit charters of domestic corporations and prohibit foreign corporations from doing business in this state, or affect the right of the state to maintain prosecutions for violations thereof, under any law of this state relating to trusts, for acts heretofore done.

Accrued rights not affected.
Amend. Ib.

Art. 5321a. Any court, officer or tribunal having jurisdiction of the offense defined in this chapter, or any district or county attorney or grand jury may subpoena persons and compel their attendance as witnesses to testify as to the violation of any of the provisions of the foregoing articles. Any person so summoned and examined shall not be liable to prosecution for any violation of said articles about which he may testify fully and without reservation.

Compulsory process.
(Acts of 1895, p. 112.)

TITLE CIX.

Weights and Measures.

	Article		Article
Legal standard weights and measures.....	5322	Counties to pay for same.....	5327
Weights of grain, etc.....	5323	License to make and vend.....	5328
Governor to procure standards.....	5324	Testing and stamping.....	5329
And furnish to counties.....	5325	False weights and measures.....	5330
Commissioner of agriculture, etc., may sell, etc.....	5326	Private informer may recover, when.....	5331
		Forfeitures merely cumulative.....	5332

Legal standard.
(Act May 7, 1846, p. 180, §4.)
P. D. 5352.

Article 5322. [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.

Weights of corn, etc.
(Acts of 1883, p. 73.)

Art. 5323. The following shall be the legal number of pounds per bushel: Wheat, sixty pounds; corn, shelled, fifty-six pounds; corn in the ear, shucked, seventy pounds; unshucked, in ear, seventy-two pounds; oats, thirty-two pounds; barley, forty-eight pounds; rye, fifty-six pounds; buckwheat, forty-two pounds; white beans, sixty pounds; Irish potatoes, sixty pounds; sweet potatoes, fifty-five pounds; onions, fifty-seven pounds; turnips, fifty-five pounds; dried apples, twenty-eight pounds; dried peaches, twenty-eight pounds; bran, twenty pounds; Hungarian grass seed, forty-eight pounds; hemp seed, forty-four pounds; flax seed, fifty-six pounds; stone coal, eighty pounds; charcoal, twenty-two pounds; salt, fifty pounds; clover seed, sixty pounds; timothy seed, forty-five pounds; cotton seed, thirty-two pounds; millet seed, fifty pounds.

Governor to procure standards.
(Act Feb. 13, 1858, p. 200, §1.)
P. D. 5353.

Art. 5324. [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.

And furnish copies to counties.
Ib. §2.
P. D. 5354.

Art. 5325. [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.

Commissioner of agriculture may sell.
(Acts of 1889, p. 32.)

Art. 5326. The commissioner of agriculture, insurance, statistics and history is hereby authorized to sell sets or parts of sets of standard weights and measures heretofore manufactured in accordance with articles 5323 and 5325 of the Revised Statutes, at the present cost of manufacturing.

Counties to pay for same.
Ib. §4.
P. D. 5356.

Art. 5327. [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.

Art. 5328. [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.

License to
make and
vend.
(Act May 7,
1846, p. 130, §3.)
P. D. 5351.

Art. 5329. [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,
1853, p. 200, §5.)
P. D. 5357.

Art. 5330. [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. 5331. [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 in-
former may
recover, whcn.
Ib. §8.
P. D. 5360.

Art. 5332. [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 cumu-
lative.

TITLE CX.

Wills.

Article	Article		
Persons competent to make a will.....	5333	The same.....	5345
What may be devised, etc., by will.....	5334	Term "children" includes descendants.....	5346
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Children born after making of will.....	5344	Shall operate as notice.....	5356

Persons com-
petent to make
a will.
(Act Jan. 28,
1840; July 24,
1856.)
P. D. 5361, 3868.

Article 5333. [4857] Every person aged twenty-one years or up-
ward, 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.

What may be
devised, etc.,
by will,
P. D. 5361-2.

Art. 5334. [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 whatever, sub-
ject to the limitations prescribed by law.

Requisites
of a will.
(Act Jan. 28,
1840.)
P. D. 5361.

Art. 5335. [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, subscrib-
ing their names thereto in the presence of the testator.

Will wholly
written by
testator.
Ib.

Art. 5336. [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.

Revocation of
written will.
P. D. 5363.

Art. 5337. [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 destroy-
ing, cancelling or obliterating the same, or causing it to be done
in his presence.

Nuncupative
will.

Art. 5338. [4862] Any person who is competent to make a last
will and testament, under article 5333, may dispose of his property
by a nuncupative will made under the conditions and limitations
hereinafter prescribed.

P. D. 5366 et
seq. Requisites
of.
P. D. 5366.

Art. 5339. [4863] No nuncupative will shall be established un-
less 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. 5340. [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.

Notice and proof.
P. D. 5371.

Art. 5341. [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. 5342. [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. 5343. [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 proportionately out of the parts devised and bequeathed to them by such last will and testament.

Posthumous children.
P. D. 5363.

Art. 5344. [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 proportionately out of the parts devised and bequeathed to them by such last will and testament, in the same manner as is provided in article 5343.

Children born after making a will.
P. D. 5364.

Art. 5345. [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. 5346. [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. 5347. [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 died intestate.

Bequests to children, etc., not to lapse.
P. D. 5365.

Art. 5348. [4872] Should any person be 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

Bequest to subscribing witness.
(Act March 15, 1876, p. 179.)

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.

Will in such case may be proved, how.
Ib.

Art. 5349. [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.

Husband or wife may authorize survivor to manage separate estate.
(Act Aug. 26, 1856, p. 51, §8.)
P. D. 4653.

Art. 5350. [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 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 deposited with county clerk, etc.
P. D. 5372.

Art. 5351. [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 recorded, etc.
Ib.

Art. 5352. [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.

How foreign will may be proved.
(Acts of 1887, p. 38, §1.)

Art. 5353. When any will or testament, or testamentary instrument of any character, conveying or in any manner disposing of land in this state, has been duly probated according to the laws of any of the United States or territories, a copy thereof and its probate, attested by the clerk of the court in which such will and testament or testamentary instrument 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 register of deeds in any county in which said real estate is situated, in the same manner as deeds and conveyances are required to be recorded, and without further proof or authentication; provided, that at any time within four years from the date of the record of such will in this state, the validity of such will may be contested in a proceeding instituted for that purpose, as the original might have been.

Prima facie evidence, when.
Ib. §2.

Art. 5354. A copy of such will and testament, or testamentary instrument, and its probate so attested, together with the certificate that said attestation is in due form, as required by the preceding article, shall be prima facie evidence that said will has been duly admitted to probate, according to the laws of the state wherein it has been admitted to probate, and shall be sufficient to authorize the same to be recorded in the proper county or counties in this state.

Art. 5355. Every such will and testament, or testamentary instrument, and its probate, which shall be attested and proven, as provided in article 5353, and delivered to the clerk of the proper court to be recorded, shall take effect and be valid and effectual as a deed of conveyance of said property, and the record thereof shall have the same force and effect as the record of deeds or other conveyances to land from the time when such instrument was delivered to such clerk to be recorded, and from that time only.

Shall take effect, when.
Ib. §3.

Art. 5356. The record of such will and testament, or testamentary instrument, and its probate, duly attested and proven, as provided in the preceding articles, and duly made in the proper county, shall be taken and held as notice to all persons of the existence of such will and testament, and of the title or titles conferred thereby.

Shall operate as notice, etc.
Ib. §4.

TITLE CXI.

Wool Growing Interests.

	Article		Article
Inspector of sheep to be appointed, when.	5357	Duties as to diseased cattle.....	5361
Bond	5358	Same	5362
Duties	5359	May be paid fees by wool growers.....	5363
Compensation	5360	Exempting counties.....	5364

Inspector of sheep to be appointed, when. (Acts of 1891, p. 140, §1.)

Article 5357. Whenever it appears from the assessor's rolls of any county that there are as many as five hundred sheep owned and assessed for taxes in any county in this state, it shall be the duty of the commissioners' court of said county, upon the application of one or more resident owners of sheep of said county, to appoint an inspector of sheep, who shall be a resident citizen of such county and well versed in the scab and diseases which usually affect sheep, and said inspector shall hold his office for two years, or until his successor is appointed and qualified. Said inspector may appoint one or more deputies, who shall likewise be well versed in scab and other diseases of sheep, who shall take the oath of office prescribed by the constitution, and may lawfully perform the same acts as the inspector of sheep, and the inspector may require of his deputies so appointed bonds payable to himself for the faithful performance of their duty as such deputies.

Bond. Ib. §2.

Art. 5358. Said inspector of sheep shall, within twenty days after receiving notice of his appointment, and before entering upon the duties of his office, execute a bond with two or more good and sufficient sureties, in a sum to be fixed by the commissioners' court, not less than one thousand nor more than five thousand dollars, payable to the county judge and his successors in office, conditioned that he will faithfully and impartially discharge and perform all the duties incumbent upon him as inspector of sheep. Said bond shall be approved by the commissioners' court and be recorded in the office of the county clerk of the county as other official bonds.

Duties. Ib. §3.

Art. 5359. It shall be the duty of the inspector of sheep or his deputy to carefully and minutely examine and inspect at any time sheep in his county, or which may be driven into or through his county, in which he has reason to believe, or is informed in writing by any one or more sheep owners of his county, or of any adjacent and contiguous county, is infected with scab or any other infectious or contagious disease; and when one or more sheep affected with scab are found in any flock so inspected, the entire flock shall be condemned by said inspector or deputy and considered as affected with said disease.

Compensation. Ib. §4.

Art. 5360. The inspector shall be entitled to receive the sum of two cents per head, unless otherwise provided in this title, for all sheep inspected and condemned under the provisions of this title; provided, the inspector shall be entitled to receive only one cent per head of any number he may inspect for any one person in excess of two thousand head. In no one case shall his fee exceed fifty dollars; such fee to be paid by the owner or person in charge of the sheep so inspected and condemned; provided, that when an inspector shall

inspect any sheep and find no scab to exist in the flock of sheep so inspected, then the fees for such service shall be paid by the person at whose instance such inspection was made; and provided further, that the inspector shall have a lien upon all sheep so inspected and condemned by him for his fees as provided in this article; provided further, that if any owner or person in charge of sheep affected with scab or other contagious disease shall report the same in writing to said inspector or his deputy, and that he proposes to take means forthwith to cure such disease, it shall not be lawful for the inspector to inspect such flock within twenty days after such report; provided, that if, after the expiration of the twenty days aforesaid, the said sheep have not been thoroughly cured, then the said sheep shall be subject to inspection as hereinbefore provided.

Art. 5361. It shall be the duty of the inspector of sheep, or his deputy, to arrest and take in charge any flock or flocks of sheep, the property of owners who do not reside in his county, or have no certain or fixed ranch therein, found traveling through his county, and found after inspection to be affected with scab, and to hold and dip said sheep at the cost of the owner or person in charge of such flock or flocks, until the same shall be cured; and said inspector shall be entitled to recover from the owner or person in charge of such flock or flocks of sheep so held by him the sum of two dollars per day as compensation for holding such sheep, in excess of inspection fees provided for in article 5388; and said inspector shall have a lien upon all sheep so held by him until all fees and expenses for holding and dipping incurred by him are paid; provided, that said inspector shall not in any case hold said flock or flocks of sheep exceeding twenty days.

Duties as to diseased sheep.
Ib. §5.

Art. 5362. Whenever any flock of sheep in any county in this state has been inspected as provided for in this chapter, and found to be affected with scab, it shall be the duty of the owner or person in charge of such flock to thoroughly cure the same within twenty days from said inspection.

Same.
Ib. §6.

Art. 5363. Whenever in any county in this state there shall not be sufficient scab or other contagious and infectious diseases among the sheep to pay the sheep inspector a fair remuneration, under the fees provided by this chapter, it shall be lawful for any association of wool growers in such county to pay such inspector such additional sums of money as to them may seem right and proper in order to keep such inspector in the performance of the duties of his office.

May be paid fees by wool growers.
Ib. §9.

Art. 5364. The counties of Grayson, Freestone, Gonzales, Morris, Titus, Cass, Marion, Bowie, Red River, Trinity, San Jacinto, Polk, Anderson, Van Zandt, Cameron, Collin, Colorado, Grimes, Houston, Webb, Encinal, Hunt, Hopkins, Ellis, Dallas, Rockwall, Denton, Fannin, Henderson, Brazos, Smith, Panola, Gregg, Lamar, Wood, Rains, Limestone, Cooke, Brown, Comanche, Cherokee, Mills, Montgomery, Shelby, Lee, Burleson, Rusk, Lavaca, Milam, Wise, Upshur, Robertson, Camp, Parker, Franklin, Navarro, Karnes, Wilson, Atascosa, Harrison, San Augustine, Sabine, Fayette, Austin, Leon, Madison, Hill, Bosque, Waller, Fort Bend, Washington, Guadalupe, Caldwell, Hays, Tarrant, Johnson, Clay, Montague, Erath, Hood, Somervell, Bastrop, Harris, Harrison, Camp, Orange, Jefferson, Hardin, Liberty, Chambers, Newton, Tyler, Jasper, Kaufman, Nacogdoches, DeWitt, Victoria, Jackson, Calhoun, Refugio, Goliad and Aransas are exempt from the provisions of this title.

Exempted counties.

TITLE CXII.

Wrecks.

CHAPTER ONE.

OF WRECK-MASTERS.

	Article		Article
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His duties.....	5367	Fees and perquisites.....	5372
To be controlled by pilot commissioners.....	5368	Special duty to prosecute.....	5373
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Appointment of wreck-masters. (Act April 30, 1846, p. 158, §1.) P. D. 5375.

Article 5365. [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.

Bond and oath. Ib.

Art. 5366. [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.

His duties. Ib. §2. P. D. 5376.

Art. 5367. [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.

To be controlled by pilot commissioners. Ib. §3. P. D. 5377.

Art. 5368. [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 take possession of wrecked property and sell. Ib. §5. P. D. 5379.

Art. 5369. [4881] Each wreck-master shall take into his custody and safely keep all wrecked property salvaged 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.

Art. 5370. [4882] Each wreck-master shall keep a true account of all property salvaged by him or under his direction, with the circumstances under which it was salvaged, and the names of the persons engaged in salvaging, 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.

Art. 5371. [4883] He shall also keep a true account, in a book to be kept for that 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.

Additional record and reports.
Ib. §4.
P. D. 5378.

Art. 5372. [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.

Fees and perquisites.
Ib. §5.
P. D. 5379.

Art. 5373. [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.

Special duty to prosecute.
Ib. §6.
P. D. 5380.

CHAPTER TWO.

OF COTTON SALVAGE.

Article	Article
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If no owner appear, to be sold.....5376	Warrant to issue for suspected cotton..5379

Article 5374. [4886] It shall be the duty of the person 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 the 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.

Wrecked cotton to be advertised.
(Act Aug. 30, 1856, p. 76, §1.)
P. D. 1030.

Art. 5375. [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.

And delivered to owner, when.
Ib. §2.
P. D. 1031.

Art. 5376. [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-

If no owner appear, to be sold.
Ib. §3.
P. D. 1032.

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. 5377. [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.

If no wreck-
master, county
clerk to act.
Ib. §4.
P. D. 1033.

Art. 5378. [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.

Warrant to
issue for sus-
pected cotton.
Ib. §6.
P. D. 1035.

Art. 5379. [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 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.

FINAL TITLE.

General Provisions.

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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."

Revised Civil Statutes, how known and cited.

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.

To be liberally construed.

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.

Repealing clause.

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.

Repeal does not affect, what.

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 alteration; 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

Same subject.

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.

Validating and legalizing statutes not repealed.

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.

Laws relating to public debt, etc., 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 university and school funds, 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 creating, etc., counties and county seats not repealed. (Acts of 1879, ch. 157.)

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.

Judicial districts, and times of holding district courts.

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.

No person, etc., released from any duty, etc.

Sec. 12. That nothing in the repealing clause of this title shall be construed as releasing any person or corporation from any duty enjoined in the limitation or condition imposed by any law that may be repealed by the repealing clause of this title.

Laws as to reservations for actual settlers and public buildings not repealed.

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 for the payment of unpaid school teachers, etc., and as to public libraries, not repealed. Certain acts to the penitentiary 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.

Certain local laws 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.

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 pre-emption laws not repealed.

Sec. 17. That the repealing clause of this title shall not affect any law concerning pre-emption settlers further than such law may be amended or changed by the Revised Statutes.

Laws concerning the Indian and Mexican frontiers, etc., not repealed.

Sec. 18. That all laws now providing for the defense of the inhabitants of this state on its Indian and 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.

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 by the twenty-third legislature, or by the present session of the twenty-fourth legislature, shall be in any way affected by the repealing clause of this title, but any and all such laws shall continue to be the law of this state, this act of revision to the contrary notwithstanding.

Laws of the twenty-third and regular session of twenty-fourth legislatures not affected.

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.

Revised Statutes not to be printed in pamphlet laws.

Sec. 22. That these 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 ninety-five.

When to take effect.

Sec. 23. Because of the importance and great length of this act, and the near approach of the end of the present session of the legislature, an imperative public necessity exists that the constitutional rule requiring bills to be read on three several days should be suspended, and it is therefore suspended.

Emergency clause.

The foregoing Act was presented to the Governor of Texas for his approval at twelve o'clock and fifteen minutes p. m. on the 29th day of April, A. D. 1895, but 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.

ALLISON MAYFIELD,

Secretary of State.

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TO

REVISED CIVIL STATUTES.

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