Texas Historical Statutes Project

1920 Complete Texas Statutes

Code of Criminal Procedure

This project was made possible by the
Texas State Law Library.

TABLE OF TITLES AND CHAPTERS

OF

CODE OF CRIMINAL PROCEDURE

THE CODE

OF

CRIMINAL PROCEDURE

TITLE 1

INTRODUCTORY

CHAPTER ONE

CONTAINING GENERAL PROVISIONS

Art. 1. (1) Objects of this Code.—It is hereby declared that this Code is intended to embrace rules applicable to the prevention and prosecution of offenses against the laws of this state, and to make the rules of proceeding in respect to the prevention and punishment of offenses intelligible to the officers who are to act under them, and to all persons whose rights are to be affected by them. It seeks—

1. To adopt measures for preventing the commission of crime.

2. To exclude the offender from all hope of escape.

3. To insure a trial with as little delay as shall be consistent with the ends of justice.

4. To bring to the investigation of each offense on the trial all the evidence tending to produce conviction or acquittal.

5. To insure a fair and impartial trial; and

6. The certain execution of the sentence of the law when declared. (O. C. 1; amended by Act Feb. 15, 1858.)

Art. 2. (2) Same subject.—In order to collect together for the convenience of officers and all others charged with the enforcement of the laws the material provisions of the constitution of this state respecting the prosecution of offenses, the following provisions of said instrument are here inserted. (O. C. 2.)

Art. 3. (3) Trial by due course of law.—No citizen of this state shall be deprived of life, liberty, property or privileges, outlawed, exiled, or in any manner disfranchised, except by due course of the law of the land. (Bill of Rights, sec. 19; O. C. 3.)

Art. 4. (4) Rights of accused persons.—In all criminal prosecutions, the accused shall have a speedy public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself. He shall have the right of being heard by himself, or counsel, or both; shall be confronted with the witnesses against him, and shall have compulsory process for obtaining witnesses in his favor. And no person shall be held to answer for a criminal offense unless on indictment of a grand jury, except in cases in which the punishment is by fine, or imprisonment otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the army and navy or in the militia when in actual service in time of war or public danger. (Bill of Rights, sec. 10; O. C. 4.)

Ex parte Hughes, 121 S. W. 1118; Baskins v. S., 171 S. W. 723.

Art. 5. (5) Protection against searches and seizures.—The people shall be secure in their persons, houses, papers and possessions from all unreasonable seizures or searches; and no warrant to search any place or to seize any person or thing shall issue without describing them as near as may be, nor without probable cause supported by oath or affirmation. (Bill of Rights, sec. 9; O. C. 5.)

Art. 6. (6) Prisoners entitled to bail, except in certain cases.—All prisoners shall be bailable by sufficient sureties, unless for capital offenses, where the proof is evident; but this provision shall not be so construed as to prevent bail after indictment found, upon examination of the evidence in such manner as may be prescribed by law. (Bill of Rights, sec. 11; O. C. 6.)

See Ex parte Gray, 55 S. W. 176; Ex parte Stephenson, 160 S. W. 77; Johnson v. S., 164 S. W. 833.

Art. 7. (7) Writ of habeas corpus shall never be suspended.—The writ of habeas corpus is a writ of right, and shall never be suspended. (Bill of Rights, sec. 12; O. C. 7.)

Art. 8. (8) Excessive bail, fines, etc., forbidden.—Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law. (Bill of Rights, sec. 13; O. C. 8.)

Art. 9. (9) No person shall be twice put in jeopardy for the same offense.—No person, for the same offense, shall be twice put in jeopardy of life or liberty; nor shall a person be again put upon trial for the same offense, after a verdict of not guilty in a court of competent jurisdiction. (Bill of Rights, sec. 14; O. C. 9.)

See post, arts. 255, 256, 601.

Art. 10. (10) Trial by jury shall remain inviolate.—The right of trial by jury shall remain inviolate. (Bill of Rights; O. C. 10.)

See post, arts. 644, 645; Lamb's Case, 93 S. W. 734; Jones v. S., 106 S. W. 345, 124 Am. St. Rep. 1097.

Art. 11. (11) Liberty of speech and of the press.—Every person shall be at liberty to speak, write or publish his opinion on any subject, being liable for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of

the press. In prosecutions for the publication of papers investigating the conduct of officers or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence. And, in all indictments for libels, the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases. Bill of Rights, sec. 8; O. C. 11.)

Art. 12. (12) Person shall not be disqualified as a witness for religious opinion or want of religious belief.—No person shall be disqualified to give evidence in any of the courts of this state on account of his religious opinions, or for the want of any religious belief; but all oaths or affirmations shall be administered in the mode most binding upon the conscience, and shall be taken subject to the pains and penalties of perjury. (Bill of Rights, sec. 5.)

See post, art. 796.

Art. 13. (13) Outlawry and transportation prohibited.—No citizen shall be outlawed, nor shall any person be transported out of the state for any offense committed within the same. (Bill of Rights, sec. 20.)

Art. 14. (14) Conviction shall not work corruption of blood, etc.—No conviction shall work corruption of blood or forfeiture of estate. (Bill of Rights, sec. 21.)

See Penal Code, arts. 61-62.

Art. 15. (15) No conviction of treason, except, etc.—No person shall be convicted of treason, except on the testimony of two witnesses to the same overt act, or on confession in open court. (Bill of Rights, sec. 22.)

See post, arts. 803, 804; P. C. ch. 1, title 4.

Art. 16. (16) Privilege of senators and representatives.—Senators and representatives shall, except in cases of treason, felony or breach of the peace, be privileged from arrest during the session of the legislature, and in going to and returning from the same, allowing one day for every twenty miles such member may reside from the place at which the legislature is convened. (Const. art. 3, sec. 14; O. C. 12.)

Art. 17. (17) Privilege of voters.—Voters shall, in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning therefrom. (Const. art. 6, sec. 5; O. C. 11.)

Art. 18. (18) Change of venue.—The power to change the venue in civil and criminal cases shall be vested in the courts, to be exercised in such manner as shall be provided by law. (Const. art. 3, sec. 45.)

See post, art. 626.

Art. 19. (19) Conservators of the peace; style of process.—All judges of the supreme court, courts of appeals and district courts, shall, by virtue of their offices, be conservators of the peace throughout the state. The style of all writs and process shall be "The State of Texas." All prosecutions shall be carried on in the name and by the authority of "The State of Texas," and conclude, "against the peace and dignity of the state." (Const. art. 5, sec. 12; O. C. 15.)

See post, arts. 451, 478.

Art. 20. (20) In what cases accused may be tried, etc., after conviction.—By the provisions of the constitution, an acquittal of the defendant exempts him from a second trial or a second prosecution for the same offense, however irregular the proceedings may have been; but, if the defendant shall have been acquitted upon trial in a court having no jurisdiction of the offense, he may, nevertheless, be prosecuted again in a court having jurisdiction. (O. C. 20.)

See post, art. 601; Ex parte Moore, 80 S. W. 620.

Art. 21. (21) No conviction of felony except by verdict of jury.—No person can be convicted of a felony except upon the verdict of a jury duly rendered and recorded. (O. C. 22.)

Jones v. S., 106 S. W. 345, 124 Am. St. Rep. 1097.

Art. 22. (22) Defendant may waive any right, except, etc.—The defendant in a criminal prosecution for any offense may waive any right secured to him by law, except the right of trial by jury in a felony case. (O. C. 26.)

See McCampbell v. S., 40 S. W. 496; Riggins v. S., 60 S. W. 877; Yancy v. S., 87 S. W. 695; Otto v. S., 87 S. W. 698; Jones v. S., 106 S. W. 345, 124 Am. St. Rep. 1097; James v. S., 167 S. W. 727; Smith v. S., 180 S. W. 278; Counts v. S., 181 S. W. 723; Orner v. S., 183 S. W. 1172; Flores v. S., 190 S. W. 496.

Art. 23. (23) Trial shall be public.—The proceedings and trials in all courts shall be public. (O. C. 23.)

Art. 24. (24) Defendant shall be confronted by witnesses, except.—The defendant, upon a trial shall be confronted with the witnesses, except in certain cases provided for in this Code where depositions have been taken. (O. C. 24.)

Art. 25. (25) Construction of this Code.—The provisions of this Code shall be liberally construed, so as to attain the objects intended by the legislature: The prevention, suppression and punishment of crime. (O. C. 25.)

See P. C. arts. 9, 10; Oliver v. S., 144 S. W. 604; Bradfield v. S., 166 S. W. 734, Ann. Cas. 1917C, 696; Martin v. S., 179 S. W. 121.

Art. 26. (26) When rules of common law shall govern.—Whenever it is found that this Code fails to provide a rule of procedure in any particular state of case which may arise, the rules of the common law shall be applied and govern. (O. C. 27.)

Art. 26a. Acts by or under military authority exempt from punishment.—No action or proceeding shall be prosecuted or maintained against a member of the military forces of this state, or officer or person acting under its authority or reviewing its proceedings, on account of the approval or imposition or execution of any sentence, or the imposition or collection of any fine or penalty, or the execution of any warrant, writ, execution, process or mandate of a military court. (Acts 1905, p. 204, ch. 104, sec. 132.)

The above provision was omitted from the revised Pen. Code; but, as it affects the enforcement of the criminal laws of the state, and in view of the decision in Berry v. S., 156 S. W. 626, it is inserted here.

CHAPTER TWO

THE GENERAL DUTIES OF OFFICERS CHARGED WITH THE ENFORCEMENT OF THE CRIMINAL LAWS

1. THE ATTORNEY GENERAL

Art. 27. (27) Attorney general shall represent the state.—It is the duty of the attorney general to represent the state in all criminal cases in the courts of appeals, except in cases where he may have been employed adversely to the state, previously to his election; and he shall not appear as counsel against the state in any court. (O. C. 28.)

See ante, Civ. St. title 65, ch. 5.

Art. 28. (28) Shall report to governor biennially.—He shall report to the governor biennially on the first Monday in December next preceding the expiration of his official term, and at such other times as the governor may require, the number of indictments which have been found by grand juries in this state for the two preceding years; the number of informations filed in this state during the same period; the offenses charged in such indictments or informations; the number of trials, convictions and acquittals for each offense; the number of indictments and informations which have been disposed of without the intervention of a petit jury, with the cause and manner of such disposition; and also a summary of the judgments rendered on conviction, specifying the offense, the nature and amount of penalties imposed, and the amount of fines collected. This report shall also give a general summary of all the business, civil and criminal, disposed of by the supreme court and courts of appeals, so far as the state of Texas may be a party to such litigation, and of all civil causes to which the state is a party prosecuted or defended by him in any other courts, state or federal. (Acts 1846, p. 206, amended by Acts 1885, pp. 61–62.)

Art. 29. (29) May require certain officers to report to him.—He may require the several district and county attorneys, clerks of the district and county courts in the state, to communicate to him at such times as he may designate, and in such form as he may prescribe, all the information necessary for his compliance with the requirements of the preceding article. And whenever the clerk of the district court of any county neglects or fails, within thirty days after the adjournment of a term of his court, to report to the attorney general the proceedings thereof, the comptroller shall thereafter, if notified of such failure, audit no more claims in favor of such clerk, until receipt of such report by the attorney general. (O. C. 944, amended by Acts 1885, p. 62.)

2. DISTRICT AND COUNTY ATTORNEYS

Art. 30. (30) Duties of district attorneys.—It is the duty of each district attorney to represent the state in all criminal cases in the district courts of his district, except in cases where he has been, before his election, employed adversely; and he shall not appear as counsel against the state in any court; and he shall not, after the expiration of his term of office, appear as counsel against the state in any case in which he may have appeared for the state. (O. C. 30.)

See ante, Civ. St. art. 338.

Art. 31. (31) Same subject.—When any criminal proceeding is had before an examining court in his district, or before a judge upon habeas corpus, and he is notified of the same, and is at the time within the county where such proceeding is had, he shall represent the state therein, unless prevented by other official duties. (O. C. 31.)

See post, art. 199.

Art. 32. (32) Duties of county attorneys.—It shall be the duty of the county attorney to attend the terms of the county and inferior courts of his county, and to represent the state in all criminal cases under examination or prosecution in said courts. He shall attend all criminal prosecutions before justices of the peace in his county when notified of the pendency of such prosecutions and when not prevented by other official duties. He shall conduct all prosecutions for crimes and offenses cognizable in such county and inferior courts of his county, and shall prosecute and defend all other actions in such courts in which the state or the county is interested. He shall also attend the terms of the district court in his county; and, if there be a district attorney of the district including such county, and such district attorney be in attendance upon such court, the county attorney shall aid him when so requested; and when there is no such district attorney, or when he is absent, the county attorney shall represent the state in such court and perform the duties required by law of district attorneys. (Const. art. 5, sec. 21.)

See ante, Civ. St. arts. 346-351; Missouri, K. & T. Ry. Co. of Texas v. Groseclose, 110 S. W. 477.

Art. 32a. Duties of County Attorney of Wichita County; compensation.—In addition to the regular duties of the county attorney as prescribed by law, it shall also be the duty of the county attorney of Wichita County to be in attendance on the district court of Wichita County for the Seventy-eighth Judicial District during the pendency of the criminal docket and to prosecute all felony cases in said court and to represent the State in all criminal matters wherein the State is a party, and said county attorney shall receive as compensation for such services the same fees as are now allowed by law to county attorneys in counties having no district attorney. (Acts 1917, ch. 71, sec. 1.)

Art. 33. (33) Duty to present officer for neglect of duty.—It shall be the duty of the district or county attorney to present to the court having jurisdiction, any officer, by information, for neglect or failure of any duty enjoined upon such officer, when such neglect or failure can be presented by information, whenever it shall come to the knowledge of said attorney that there has been a neglect or failure of duty upon the part of said officer; and it shall be his duty to bring to the notice of the grand jury all acts of violation of law or neglect or failure of duty upon the part of any officer, when such violation, neglect or failure are not presented by information, and whenever the

same may come to his knowledge. (Acts 1876, p. 86.)

Missouri, K. & T. Ry. Co. of Texas v. Groseclose, 110 S. W. 477.

Art. 34. (34) Shall hear complaints, and what the same shall contain.—Upon complaint being made before a district or county attorney that an offense has been committed in his district or county, he shall reduce the complaint to writing and cause the same to be signed and sworn to by the complainant, and it shall be duly attested by said attorney. Said complaint shall state the name of the accused, if his name is known; and, if his name is not known, it shall describe him as fully as possible; and the offense with which he is charged shall be stated in plain and intelligible words; and it must appear that the offense was committed in the county where the complaint is filed, and within a time not barred by limitation. (Act 1876, p. 87, sec. 13.)

See post, arts. 479, 1002, 1003; Thomas v. S., 38 S. W. 1011; Bailey v. S., 53 S. W. 117; Rambo v. S., 64 S. W. 1039; Johnson v. S., 85 S. W. 274; Williams v. S., 96 S. W. 47; Missouri, K. & T. Ry. Co. of Texas v. Groseclose, 110 S. W. 477; Sandoloski v. S., 143 S. W. 151; Boren v. S., 192 S. W. 1063; Harper v. S., 198 S. W. 786.

Art. 35. (35) Duty when complaint has been made.—If the offense be a misdemeanor, the attorney shall forthwith prepare an information, and file the same, together with the complaint, in the court having jurisdiction of the offense. If the offense charged be a felony, he shall forthwith file the complaint with a magistrate of the county, and cause the necessary process to be issued for the arrest of the accused. (Acts 1876, p. 87, sec. 15.)

See Rambo v. S., 64 S. W. 1039; Missouri, K. & T. Ry. Co. of Texas v. Groseclose, 110 S. W. 477; Sponberg v. S., 131 S. W. 541; Ethridge v. S., 172 S. W. 784.

Art. 36. (36) May administer oaths.—For the purpose mentioned in the two preceding articles, district and county attorneys are authorized to administer oaths. (Acts 1876, p. 87, sec. 14.)

See post, art. 479; Johnson v. S., 85 S. W. 274; Missouri, K. & T. Ry. Co. of Texas v. Groseclose, 110 S. W. 477; Ex parte Nitsche, 170 S. W. 1101.

Art. 37. (37) Shall not dismiss case, unless.—The district or county attorney shall not dismiss a case unless he shall file a written statement with the papers in the case, setting out his reasons for such dismissal, which reasons shall be incorporated in the judgment of dismissal; and no case shall be dismissed without the permission of the presiding judge, who shall be satisfied that the reasons so stated are good and sufficient to authorize such dismissal. (Acts 1876, p. 88, sec. 20.)

See Kelly v. S., 38 S. W. 39; Ex parte Park, 40 S. W. 300; Maeyers v. S., 49 S. W. 381; Tullis v. S., 52 S. W. 83; Vincent v. S., 55 S. W. 820; Brown v. S., 58 S. W. 131; Stevens v. S., 59 S. W. 545; Ex parte Gibson, 62 S. W. 755; Diseren v. S., 127 S. W. 1038; Hughes v. S., 136 S. W. 1068; Ex parte Nitsche, 170 S. W. 1101.

Art. 38. (38) Attorney pro tem. may be appointed.—Whenever any district or county attorney shall fail to attend any term of the district, county or justice's court, the judge of said court or such justice may appoint some competent attorney to perform the duties of such district or county attorney, who shall be allowed the same compensation for his services as are allowed the district or county attorney. Said appointment shall not extend beyond the term of the court at which it is made, and shall be vacated upon the appearance of the district or county attorney. (Acts 1876, p. 87, sec. 12.)

See post, art. 199; Harris Co. v. Stewart, 41 S. W. 651; Locklin v. S., 75 S. W. 306; Daniels v. S., 77 S. W. 215.

Art. 39. (39) Shall report to attorney general when required.—District and county attorneys shall, when required by the attorney general, report to him at such time, and in accordance with such forms, as he may direct, such information as he may desire in relation to criminal matters and the interests of the state, in their districts and counties.

See ante, art. 29.

Art. 40. (40) Shall not be of counsel adverse to the state.—District and county attorneys shall not be of counsel adversely to the state in any case, in any court, nor shall they, after they cease to be such officers, be of counsel adversely to the state in any case in which they have been of counsel for the state. (O. C. 30.)

See ante, art. 30.

Art. 40a. County attorney of Jefferson county to represent state.—The County Attorney of Jefferson County shall represent the State in all prosecutions pending in said county court of Jefferson County at Law, and shall be entitled to the same fees as now prescribed by law for such prosecutions. (Acts 1915, ch. 29, sec. 6; Acts 1919, ch. 27, sec. 6.)

3. MAGISTRATES

Art. 41. (41) Who are magistrates.—Either of the following officers is a "magistrate" within the meaning of this Code: The judges of the supreme court, the judges of the courts of appeals, the judges of the district court, the county judges of the county, either of the county commissioners, the justices of the peace, the mayor or recorder of an incorporated city or town. (O. C. 52.)

See post, art. 62; Gonzales v. S., 110 S. W. 740; Brown v. S., 118 S. W. 139.

Art. 42. (42) Duty of magistrates.—It is the duty of every magistrate to preserve the peace within his jurisdiction by the use of all lawful means; to issue all process intended to aid in preventing and suppressing crime; to cause the arrest of offenders, by the use of lawful means, in order that they may be brought to punishment. (O. C. 32.)

See post, art. 142; P. C. art. 992; Jones v. S., 65 S. W. 92; Muckenfuss, Ex parte, 107 S. W. 1131.

4. PEACE OFFICERS

Art. 43. (43) Who are peace officers.—The following are "peace officers:" The sheriff and his deputies, constable, the marshal, constable or policeman of an incorporated town or city, and any private person specially appointed to execute criminal process. (O. C. 53.)

See post, arts. 147, 279; Messer v. S., 40 S. W. 488; Jay v. S., 55 S. W. 335; Jones v. S., 65 S. W. 91; Hull v. S., 100 S. W. 403; Ritter v. Neatherly, 157 S. W. 439; Minter v. S., 159 S. W. 286; Ex parte Preston, 161 S. W. 115.

Art. 44. (44) Duties and powers of peace officers.—It is the duty of every peace officer to preserve the peace within his jurisdiction. To effect this purpose, he shall use all lawful means. He shall, in every case where he is authorized by the provisions of this Code, interfere without warrant to prevent or suppress crime. He shall execute

all lawful process issued to him by any magistrate or court. He shall give notice to some magistrate of all offenses committed within his jurisdiction, where he has good reason to believe there has been a violation of the penal law. He shall arrest offenders without warrant in every case where he is authorized by law, in order that they may be taken before the proper magistrate or court and be brought to punishment. (O. C. 34.)

See post, arts. 121, 122; P. C. 468.

Art. 45. (45) May summon aid when resisted.—Whenever a peace officer meets with resistance in discharging any duty imposed upon him by law, he shall summon a sufficient number of citizens of his county to overcome the resistance; and all persons summoned are bound to obey; and, if they refuse, are guilty of the offense prescribed in article 229 of the Penal Code. (O. C. 44.)

See post, arts. 139, 143, 371; P. C. art. 333; ante, Civ. St. arts. 7135, 7146; Presley v. Ft. Worth & D. C. Ry. Co., 145 S. W. 669.

Art. 46. (46) Person refusing to obey liable to prosecution.—The peace officer who has summoned any person to assist him in performing any duty shall report such person, if he refuse to obey, to the district or county attorney of the proper district or county, in order that he may be prosecuted for the offense. (O. C. 45.)

See P. C. art. 351.

Art. 47. (47) Officer neglecting to execute process may be fined for contempt.—If any sheriff or other officer shall wilfully refuse or fail from neglect to execute any summons, subpœna or attachment for a witness, or any other legal process which it is made his duty by law to execute, he shall be liable to a fine for contempt not less than ten nor more than two hundred dollars, at the discretion of the court having cognizance of the same; and the payment of said fine shall be enforced in the same manner as fines for contempt in civil cases. (Acts Feb. 11, 1860.)

See ante, Civ. St. arts. 1708, 1770; P. C. arts. 388, 430.

Art. 47a. Texas Rangers clothed with powers of peace officers.—The officers, noncommissioned officers and privates of this force [Ranger force. See Civ. St. arts. 6754–6766] shall be clothed with all the powers of peace officers, and shall aid the regular civil authorities in the execution of the laws. They shall have authority to make arrests, and to execute process in criminal cases, and in such cases they shall be governed by law regulating and defining the powers and duties of sheriffs when in discharge of similar duties; except that they shall have the power, and shall be authorized to make arrests and to execute all process in criminal cases in any county in the state. They shall, before entering on the discharge of these duties, take an oath before some authority legally authorized to administer the same, that each of them will faithfully perform his duties in accordance with law. In order to arrest and bring to justice men who have banded together for the purpose of committing robbery, or other felonies, and to prevent the execution of the laws, the officers, non-commissioned officers and privates of said force may accept the services of such citizens as shall volunteer to aid them; but while so engaged such citizens shall not receive pay from the state for such services. (Acts 1901, p. 41, sec. 11.)

Art. 47b. In case of arrest to convey prisoner to county jail.—When said force, or any member or members thereof, shall arrest any person charged with the commission of a criminal offense, they shall forthwith convey said person to the county where he or they stand charged with the commission of an offense, and shall deliver him or them to the proper officer, taking his receipt therefor, and all necessary expenses thus incurred will be paid by the state. (Id. sec. 12.)

5. SHERIFFS

Art. 48. (48) Shall be conservator of the peace and arrest offenders.—Each sheriff shall be a conservator of the peace in his county, and shall arrest all offenders against the laws of the state, in his view or hearing, and take them before the proper court for examination or trial. He shall quell and suppress all assaults and batteries, affrays, insurrections and unlawful assemblies. He shall apprehend and commit to jail all felons and other offenders, until an examination or trial can be had. (Acts 1846, p. 265; P. D. 5115.)

Art. 49. (49) Keeper of jail.—Each sheriff is the keeper of the jail of his county, and responsible for the safe keeping of all prisoners committed to his custody. (O. C. 37.)

See ante, Civ. St. title 74.

Art. 50. (50) Shall place in jail every person committed by lawful authority.—When a prisoner is committed to jail by lawful warrant from a magistrate or court, he shall be placed in jail by the sheriff; and it is a violation of duty on the part of any sheriff to permit a defendant so committed to remain out of jail, except that he may, when a defendant is committed for want of bail, or when he arrests after indictment or information in a bailable case, give the person arrested a reasonable time to procure bail; but, in the meanwhile he shall so guard the accused as to prevent escape. (O. C. 38.)

See ante, Civ. St. arts. 5108, 5113; P. C. arts. 320, 325; Maddox v. Hudgeons, 72 S. W. 415.

Art. 51. (51) Shall notify district and county attorneys of prisoners, etc.—The sheriff shall, at each term of the district or county court, give notice to the district or county attorney as to all prisoners in his custody, and of the authority under which he detains them. (O. C. 39.)

Art. 52. (52) May appoint a jailer, who shall be responsible.—The sheriff may appoint a jailer to take charge of the jail, and supply the wants of those therein confined; and the person so appointed is responsible for the safety of the prisoners, and liable to punishment as provided by law for negligently or wilfully permitting a rescue or escape. But the sheriff shall, in all cases, exercise a supervision and control over the jail. (O. C. 40.)

See P. C. art. 325.

Art. 53. (53) May rent room and employ guard, when.—When there is no jail in a county, the sheriff may rent a suitable house and employ guards, all of which expenses shall be paid by the proper county. (O. C. 43.)

Art. 54. (54) Deputy may perform duties of sheriff.—Wherever a duty is imposed by this Code upon the sheriff, the same duty may lawfully be performed by his deputy; and when there is no sheriff in a county, the duties of that office, as to all proceedings under the criminal law, devolve upon the officer who, under the law, is empowered to discharge the duties of sheriff, in case of vacancy in the office. (O. C. 46.)

6. CLERKS OF THE DISTRICT AND COUNTY COURTS

Art. 55. (55) Shall file all papers, issue process, etc.—It is the duty of every clerk of the district or county court to receive and file all papers in respect to criminal proceedings, to issue all process in such cases, and to perform all other duties imposed upon them by this Code or the penal laws of this state, and a wilful failure to perform any such duties renders them liable to prosecution for an offense, in accordance with the provisions of the Penal Code. (O. C. 47.)

See P. C. 430.

Art. 56. (56) Power of deputy clerks.—Whenever a duty is imposed upon the clerk of the district or county court the same may be lawfully performed by his deputy. (O. C. 48.)

See ante, Civ. St. arts. 1691, 1693.

Art. 57. (57) Shall report to attorney general.—The clerks of the district and county courts shall, when required by the attorney general, report to him at such times, and in accordance with such forms as he may direct, such information in relation to criminal matters as may be shown by the records in their respective offices.

See ante, art. 29.

CHAPTER THREE

CONTAINING DEFINITIONS

Art. 58. (58) Words and phrases, how understood.—All words and phrases used in this Code are to be taken and understood in their usual acceptation in common language, except where their meaning is particularly defined by law. (O. C. 49.)

See P. C. art. 9.

Art. 59. (59) Same subject.—The words and terms made use of in this Code, unless herein specially excepted, have the meaning which is given to them in the Penal Code, and are to be construed and interpreted as therein declared. (O. C. 50.)

Art. 60. (60) Criminal action, how prosecuted.—A criminal action is prosecuted in the name of the state of Texas against the person accused, and is conducted by some officer or person acting under the authority of the state, in accordance with its laws. (O. C. 51.)

Art. 61. (61) "Officers" includes what.—The general term "officers" includes both magistrates and peace officers. (O. C. 54.)

Art. 62. (62) "Examining court" defined.—When the magistrate sits for the purpose of inquiring into a criminal accusation against any person, this is called an "examining court." (O. C. 55.)

See post, arts. 292 et seq.; Brown v. S., 118 S. W. 139.

TITLE 2

OF THE JURISDICTION OF COURTS IN CRIMINAL ACTIONS

CHAPTER ONE

WHAT COURTS HAVE CRIMINAL JURISDICTION

Art. 63. (63) What courts have criminal jurisdiction.—The following courts have jurisdiction in criminal actions: (1) The court of criminal appeals. (2) The district courts, and the criminal district courts of Galveston and Harris and Dallas counties. (3) The county courts. (4) The justice courts and the mayor's and other courts of incorporated cities and towns; provided, that when two or more courts have concurrent jurisdiction of any offense against the penal laws of this state, the court in which an indictment or a complaint shall first be filed shall retain jurisdiction of said offense to the exclusion of all other courts. (Const. art. 5, sec. 6; O. C. 57; amended Acts 1903, p. 194.)

See Pearce v. S., 98 S. W. 861; Johnson v. S., 148 S. W. 300; Pittcock v. S., 163 S. W. 971; Ex parte Drane, 191 S. W. 1156; Wrenn v. S., 200 S. W. 844.

CHAPTER TWO

OF THE COURT OF CRIMINAL APPEALS [AND THE SUPREME COURT]

Art. 64. (64) Court to consist of three judges, their qualifications, salaries.—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 court. Said judges shall have the same qualifications and receive the same salaries as judges of the supreme court. (Acts 22d Leg. S. S. ch. 16, sec. 1; also art. 1652 [1044] Civ. St.)

Art. 65. (65) Election of judges; term of office.—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. (Id. sec. 2; also art. 1653 [1045] Civ. St.)

Art. 66. (66) Classification of judges.—At the first session of said court after the first election of the judges thereof under this act, the terms of office of said judges shall be divided into three classes, and the justices 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 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. (Id. sec. 3; also art. 1657 [1049] Civ. St.)

Art. 67. (67) Vacancies, how filled.—In a 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 court of criminal appeals until the expiration of their term of office. (Id. sec. 4; also art. 1656 [1048] Civ. St.)

Art. 68. (68) Appellate jurisdiction.—Said court shall have appellate jurisdiction co-extensive with the limits of the state in all criminal cases of whatever grade, with such exceptions and under such regulations as may be prescribed by law. (Id. sec. 5; also art. 1659 [1052] Civ. St.)

Art. 69. (69) Power to issue writs.—Said court and the judges thereof shall have the power to issue the writ of habeas corpus, and, under such regulations as may be prescribed by law, issue such writs as may be necessary to enforce its own jurisdiction. (Id. sec. 6; also art. 1660 [1053] Civ. St.)

See Boom v. S., 59 S. W. 267; Monroe v. S., 59 S. W. 545; Hofheniz v. S., 74 S. W. 311; Ex parte Alderete, 203 S. W. 763.

Art. 70. (70) Power to ascertain facts.—Said court shall have power, upon affidavit or otherwise, to ascertain such matters of fact as may be necessary to the exercise of its jurisdiction. (Id. sec. 7; also art. 1661 [1054] Civ. St.)

Art. 71. (71) Presiding judge; process, how tested.—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. (Id. sec. 8; also art. 1654 [1046] Civ. St.)

Art. 72. (72) When judge is disqualified.—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. (Id. sec. 9; also art. 1655 [1047] Civ. St.)

Art. 73. (73) Term of court.—Said court shall hold one term each year at the city of Austin, commencing on the first Monday in October of each year, and shall continue until the last Saturday in June next succeeding; and all cases pending shall be returnable to said court at Austin; and appeals in criminal cases shall be filed with the clerk of said court at Austin upon the same conditions and same rules as now obtain. (Id. sec. 10; amended Act 1909, p. 51; also art. 1658 [1050] Civ. St.)

Art. 74. (74) Appeals.—Appeals from the several counties shall be returnable to said court, and shall be determined by said court, under the rules thereof. (Acts 22d Leg. S. S. ch. 16, sec. 11.)

Art. 75. (75) Clerk to be appointed.—Said court shall appoint a clerk, 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. (Id. sec. 12; also art. 1662 [1055] Civ. St.)

Art. 76. (76) Oath and bond of clerk.—Said clerk shall, before entering upon the duties of his office, 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 be hereafter required of the clerk of the supreme court. (Id. sec. 13; also art. 1663 [1056] Civ. St.)

Art. 77. (77) Duties of clerk.—Said clerk shall perform as clerk of the court of criminal appeals the like duties as are now or may hereafter be required by law of the clerk of the supreme court, and shall be subject to the same liabilities as are now or may hereafter be prescribed for the clerk of the supreme court. (Id. sec. 14; also art. 1664 [1057] Civ. St.)

Art. 78. (78) Deputy clerk.—Said clerk may appoint a deputy, who shall perform all the duties of said clerk, and who shall be responsible to said clerk for the faithful discharge of the duties of his office. (Id. sec. 15; also art. 1665 [1058] Civ. St.)

Art. 79. (79) Seal of court.—It shall be the duty of the court of criminal appeals to procure a seal for said court; said seal to have a star with five points, with the words "Court of Criminal Appeals of Texas" engraved on it. (Id. sec. 16; also art. 1666 [1059] Civ. St.)

Huffman v. S., 123 S. W. 596.

Art. 80. (80) Court reporter and reports.—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 volumes 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 volume 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. (Id. sec. 17; also art. 1667 [1060] Civ. St.)

Art. 81. (81) Reporter to return opinions.—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 clerk of said court, who shall take the reporter's receipt for the same; but the reporter shall return to said clerk the said opinions, records and papers when he shall have finished using them. (Id. sec. 18; also art. 1668 [1061] Civ. St.)

Art. 82. (82) Transfer of cases.—All criminal cases pending on appeal when this act takes effect shall be transferred to the court of criminal appeals, to be determined by said court as provided by law. (Id. sec. 19.)

Art. 83. (83) Mandate.—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 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. (Id. sec. 20; also art. 1669 [1062] Civ. St.)

Art. 84. (84) Writ of habeas corpus.—The court of criminal appeals, or either of the judges thereof, shall have original jurisdiction to inquire into the cause of the detention of persons imprisoned or detained in

custody, and for this purpose may issue the writ of habeas corpus, and upon the return thereof may remand such person to custody, admit to bail or discharge the person imprisoned or detained, as the law and the nature of the case may require. (Id. sec. 23.)

Art. 85. Supreme court or any one of the justices may issue writ.—The supreme court of Texas, or any one of the justices thereof, shall have power, either in term time or vacation, to issue writs of habeas corpus in all cases where any person is restrained in his liberty by virtue of any order, process or commitment, issued by any court or judge, on account of the violation of any order, judgment or decree, theretofore made, rendered or entered by such court or judge in any civil cause; and said supreme court, or any one of the justices thereof, shall have power, either in term time or vacation, pending the hearing of the application for such writ, to admit to bail any person to whom the writ of habeas corpus may be so granted. (Acts 1905, p. 20.)

Art. 86. (85) Appellate jurisdiction.—The court of criminal appeals shall have appellate jurisdiction co-extensive with the limits of the state in all criminal cases of whatever grade. (Acts 22d Leg., S. S. ch. 16, sec. 24.)

Haak v. S., 132 S. W. 357; Colf v. S., 193 S. W. 148; Garcia v. S., 195 S. W. 196.

Art. 87. (86) Article 86 construed.—The preceding section shall not be so construed as to embrace cases which have been appealed from justices', mayors' or other inferior courts, to the county court, and in which the judgment rendered or fine imposed by the county court shall not exceed one hundred dollars, exclusive of cost. In such cases, the judgment of the county court shall be final. (Id. sec. 25.)

See Samuels v. S., 50 S. W. 715; Haak v. S., 132 S. W. 357; Lockett v. S., 148 S. W. 305; Corbett v. S., 156 S. W. 206; Swann v. S., 159 S. W. 846; Thomas v. S., 160 S. W. 380; Allen v. S., 167 S. W. 342; Smith v. S., 182 S. W. 310; Grigsby v. S., 183 S. W. 143; Colf v. S., 193 S. W. 148; Perkins v. S., 198 S. W. 302.

CHAPTER THREE
OF THE DISTRICT COURTS

Art. 88. (87) Have exclusive jurisdiction of felonies.—The district courts shall have exclusive original jurisdiction in criminal cases of the grade of felony. (Const. art. 5, sec. 8.)

Art. 89. (88) Shall determine grades of offenses.—Upon the trial of a felony case, whether the proof develop a felony or a misdemeanor, the court shall hear and determine the case as to any degree of offense included in the charge. (Acts 1876, p. 18, sec. 3.)

Art. 90. (89) Misdemeanors involving official misconduct.—The district court shall have exclusive original jurisdiction in cases of misdemeanor involving official misconduct. (Const. art. 5, sec. 8.)

Art. 91. [Superseded.]

See post, art. 97a et seq.

Art. 92. (90) Power to issue writs of habeas corpus.—The district courts and the judges thereof shall have power to issue writs of habeas corpus in felony cases, and upon the return thereof, may remand to custody, admit to bail, or discharge the person imprisoned or detained, as the law and nature of the case may require. (Const. art. 5, sec. 8.)

See post, arts. 160 et seq.

Art. 93. Special terms of district court may be held.—Where it may become advisable, in the opinion of the judge of the district in which any county in the state of Texas may be situated, to hold a special term or terms of the district courts therein, such special term or terms may be held. (Acts 1905, p. 116.)

Art. 94. How and when special terms may be convened.—The judge of the district in which a county may be situated, in which it is deemed advisable by such judge that a special term of the courts should be held, may convene such special term of the courts at any time which may be fixed by him. The said judge may appoint jury commissioners, who may select and draw grand and petit jurors in accordance with the law; said jurors may be summoned to appear before said courts at such time as may be designated by the judge thereof; provided, that, in the discretion of the judge, a grand jury need not be drawn or impaneled. (Id. p. 116.)

Art. 95. Grand jury when selected shall discharge its duties as at a regular meeting.—The grand jury selected, as provided for in the preceding section, shall be duly impaneled and proceed to the discharge of its duties as at a regular term of the court. (Id. p. 116.)

Art. 96. Person indicted by such grand jury may be placed on trial.—Any person indicted by the grand jury impaneled at a special term of the courts may be placed upon trial at said special term. (Id. p. 116.)

Art. 97. Not to repeal provision of Revised Civil Statutes.—Nothing herein contained shall be held to repeal any part of the provisions of the Revised Civil Statutes of Texas as to the terms of the district court, except so far as the same may be inconsistent with the provisions of this law. (Id. p. 116.)

CHAPTER THREE A
CRIMINAL DISTRICT COURTS

DALLAS COUNTY

Art. 97a. Dallas criminal district court created; jurisdiction.—There is hereby created and established at the city of Dallas a criminal district court, which shall have and exercise all the criminal jurisdiction heretofore 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. (Acts 1893, p. 118; Rev. Civ. St. 1911, art. 2229.)

The act, embraced in this article, and arts. 97b-97g, post, was not included in the revised Pen. Code of 1911, except in a meagre manner (arts. 63 and 91). The importance of the permanent special criminal district courts would seem to require that the acts relating to them should appear in the criminal statutes.

Other acts creating special criminal district courts for a limited period have been omitted as temporary. These omitted acts are as follows: Acts 1913, ch. 181 creating a special district court for the ninth judicial district, to continue in existence until Dec. 31, 1914; Acts 1913, ch. 182 creating a similar court for Grayson County, to expire Dec. 1,

1914; Acts 1913, S. S., ch. 25, creating such a court for El Paso County to endure until Dec. 31, 1914; and Acts 1913, S. S., ch. 34 creating a court for the fifth judicial district, which ceased to exist Jan. 1, 1915.

Art. 97b. Dallas county district courts to have no criminal jurisdiction.—The district courts of Dallas county shall not have nor exercise any criminal jurisdiction. (Acts 1893, p. 118; Rev. Civ. St. 1911, art. 2230.)

Art. 97c. Judge; qualifications, election, etc.—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. (Acts 1893, p. 118; Rev. Civ. St. 1911, art. 2231.)

Art. 97d. Seal of the court and its use.—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. (Acts 1893, p. 118; Rev. Civ. St. 1911, art. 2232.)

Art. 97dd. Sheriff, clerk and county attorney to serve, etc.—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. (Acts 1893, p. 118; Rev. Civ. St. 1911, art. 2233.)

Art. 97e. Terms of the court and grand juries.—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 in July; and one term beginning the first Monday of October, respectively. The grand jury shall be impaneled in said court for each term thereof unless otherwise directed by the judge of said court; and the procedure for drawing jurors for said court shall be the same as is now or may hereafter be required by law in district courts and under like rules and regulations. (Acts 1893, p. 118; Acts 1917, ch. 136, sec. 1; Rev. Civ. St. 1911, art. 2234.)

Art. 97ee. Practice in.—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. (Rev. Civ. St. 1911, art. 2235.)

Art. 97f. Court created.—That there is hereby created and established at the city of Dallas a criminal district court to be known as the "Criminal District Court No. 2 of Dallas County," which court shall have and exercise concurrent jurisdiction with the criminal district court of Dallas county, Texas, as now given and exercised by the said criminal district court of Dallas county under the Constitution and laws of the State of Texas. (Acts 1911, 1st C. S., ch. 19, sec. 1.)

Art. 97ff. Concurrent jurisdiction with criminal district court of Dallas county; felony cases; transfer of causes.—From and after the time this law shall take effect the criminal district court of Dallas county, and the criminal district court No. 2 of Dallas county shall have and exercise concurrent jurisdiction with each other in all felony causes and in all matters and proceedings of which the said criminal district court of Dallas county now has jurisdiction; and either of the judges of said criminal district court may in their discretion transfer any cause or causes that may at any time be pending in his court to the other criminal district court by an order or orders entered upon the minutes of his court; and where such transfer or transfers are made the clerk of such district court shall enter such cause or causes upon the docket to which such transfer or transfers are made, and, when so entered upon the docket, the judge shall try and dispose of said causes in the same manner as if such causes were originally instituted in said court. (Id. sec. 2.)

Art. 97g. Judges; election, terms, qualifications, powers and duties; exchange; special judge, etc.—The judge of said criminal district court No. 2 of Dallas county 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 the judge of a 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 of the criminal district court of Dallas county. 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 a 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, if in session, shall appoint a judge of said court, who shall hold the office until the next general election, after the passage of this law, and until his successor shall have been elected and qualified. (Id. sec. 3.)

Art. 97gg. Seal of court, etc.—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 No. 2 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. (Id. sec. 4.)

Art. 97ggg. Same subject.—There is hereby created and established a Criminal Judicial District of Dallas County, Texas, to be composed of the County of Dallas, Texas, alone, and the Criminal District Court of Dallas county, and the Criminal District Court No. 2 of Dallas county, Texas, shall have and exercise all the Criminal Jurisdiction of such courts, of and for said Criminal District of Dallas county, Texas, that are now conferred by law on said Criminal District Courts. (Acts 1917, ch. 121, sec. 1.)

Art. 97h. Sheriff, county attorney, and clerk of Dallas county to act, etc.; fees.—The sheriff, 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 of 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. (Acts 1911, 1st C. S., ch. 19, sec. 5.)

Art. 97hh. Terms of court; grand jury; drawing jurors; pleading, practice, and procedure.—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 April, one term beginning the first Monday of July, one term beginning the first Monday of October, and one term beginning the first Monday of January. The grand jury shall be impaneled in said court for each term thereof unless otherwise directed by the judge of said court, and the procedure for drawing jurors for said court shall be the same as is now or may hereafter be required by law in district courts, and under the same rules and regulations. 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. (Id. sec. 6.)

Art. 97i. Apportionment.—Dallas county shall constitute the Forty-fourth Judicial District and the Sixty-eighth Judicial District, and Dallas county and Rockwall county shall constitute the Fourteenth Judicial District. The said district courts herein named shall not have nor exercise any criminal jurisdiction in Dallas county, such criminal jurisdiction having been by law exclusively vested in the Criminal District Courts for said county. But all of said three courts shall have and exercise concurrent jurisdiction coextensive with the limits of Dallas county in all civil cases, proceedings and matters of which district courts are given jurisdiction by the Constitution and laws of the State. The said Fourteenth Judicial District Court shall have jurisdiction in Rockwall county, Texas, in all civil and criminal cases which under the Constitution and laws of this State are cognizable by district courts, and in which the jurisdiction is in Rockwall county, Texas; and all appeals in criminal cases shall be to the Court of Criminal Appeals of the State of Texas under the same regulations as are now or may hereafter be provided by the laws for appeals in criminal cases in the district court. (Acts 1913, ch. 89, sec. 1.)

See ante, art. 97ggg.

Art. 97ii. Jurisdiction; misdemeanor cases; transfer of causes.—The Criminal District Court and Criminal District Court No. 2 of Dallas County shall have and exercise original concurrent jurisdiction with each other and with the County Court of Dallas County at Law in all matters and proceedings relative to misdemeanor causes of which the County Court of Dallas County at Law now has jurisdiction and either of the judges of said Criminal District Courts and the judge of said County Court of Dallas County at Law may, in his discretion, or upon the motion of the county attorney of Dallas county, transfer by written order or orders, entered upon the minutes of said court, any misdemeanor cause or misdemeanor causes that may at any time be pending in either of said courts to either of the other of said courts, as should, in his discretion, be transferred or as may be prayed for in the motion of the county attorney. (Acts 1915, ch. 37, sec. 1.)

Art. 97j. Duty of county clerk on transfer of cause; costs and fees; duty of clerk of district court.—Upon the transfer of any such cause or causes from said County Court of Dallas County at Law to either of said Criminal District Courts it shall be the duty of the county clerk of Dallas County to prepare and forward with the papers in said cause or causes so transferred a bill of the cost then accrued which said cost shall follow said cause or causes, and be taxed in said cause or causes with any other cost that may accrue in said cause or causes in either of said Criminal District Courts to which said cause or causes may be transferred; provided that the county clerk of Dallas County making such a bill of cost shall receive the sum of 50 cents for the preparation and forwarding of said bill of cost, in each cause so transferred, which said sum and cost shall be taxed in said cause and collected as other cost in the manner now provided by law; and the clerk of the District Court of Dallas County shall likewise, upon the transfer of any such cause from either of said Criminal District Courts to the County Court of Dallas County at Law,

prepare such bill of cost and forward same as provided therein, and shall receive the same compensation as herein provided for the county clerk of Dallas County in such cases. (Id. sec. 2.)

Art. 97jj. Misdemeanor dockets for transferred cases.—The clerk of the District Court of Dallas County shall keep for each of said Criminal District Courts a misdemeanor docket and a misdemeanor motion docket in like manner as is now provided for by law for the County Court of Dallas County at Law, and upon any such cause or causes being transferred from the County Court of Dallas County at Law or from one of said Criminal District Courts to the other, said cause or causes shall be docketed as now provided by law for the County Court of Dallas County at Law. (Id. sec. 3.)

Art. 97jjj. Practice in transferred causes.—In trial of causes transferred to either of the Criminal District Courts of Dallas County from the County Court of Dallas County at Law, the trials, pleadings and practice shall be the same as in trial of other causes over which the Criminal District Courts of Dallas County now have jurisdiction. (Id. sec. 4.)

Art. 97k. Fees of officers in misdemeanor causes.—The county attorney of Dallas county and all other officers shall receive the same fees in misdemeanor causes in said Criminal District Courts as are now provided by law in the County Court of Dallas County at Law and in all other matters of cost tax in said causes in said Criminal District Courts, the item shall in no event be greater than that provided by law for such items in the County Court of Dallas County at Law, and all such cost in such causes shall be paid to the officers of the court in which same is accrued. (Id. sec. 5.)

Art. 97kk. Filing misdemeanor causes in either court.—All misdemeanor causes of which the County Court of Dallas County now has jurisdiction may be filed originally with the clerk of the district [court] of Dallas county, in either the Criminal District Court of Dallas County or the Criminal District Court No. 2 of Dallas County, in the same manner as is now provided by law for the filing of such causes with the county clerk of Dallas county in the County Court of Dallas County at Law. (Id. sec. 7.)

Art. 97*l*. Jurisdiction of proceeding on bail bonds and recognizances given in transferred causes.—Said Criminal District Courts shall have jurisdiction on all bail bonds and recognizances taken in proceedings had before such courts; in all causes transferred to said courts from either of them or that may be transferred to said courts from the County Court of Dallas County at Law; and may enter forfeitures thereof; and final judgment and enforce the collection of same by proper process in the manner as provided by law in said bail bond proceedings; and all bail bonds, recognizances or other obligations taken for the appearance of defendants, parties and witnesses, in either the County Court of Dallas County at Law or Criminal District Court of Dallas County, or Criminal District Court No. 2 of Dallas County, shall be binding on all such defendants, parties and witnesses and their sureties for appearance in either of said courts in which said cause may be pending or to which same may be transferred. (Id. sec. 7a.)

Art. 97*ll*. Jurisdiction; felony and misdemeanor cases; judges may sit in either court.—From and after the time this law shall take effect the Criminal District Court of Dallas County, Texas, and the Criminal District Court Number Two of Dallas County, Texas, and the respective judges thereof, shall have and exercise concurrent jurisdiction with each other in all felony cases, and in all misdemeanor cases in which said courts have, or may hereafter have, concurrent jurisdiction with the County Court of Dallas County at Law, and in all matters and proceedings of which either of said criminal district courts of Dallas County, Texas, now have jurisdiction; and either of the judges of said criminal district courts may, in his discretion, in the absence of the judge of the other criminal district court from his courtroom, or from the County of Dallas, Texas, try and dispose of any cause or causes that may be pending in such criminal district court as fully as could such absent judge were he personally present and presiding. And either of said judges may receive in open court from the foreman of the grand jury any bill or bills of indictment in the court to which such bill or bills of indictment may be returnable, entering the presentment of such bill or bills of indictment in the minutes of the proceedings of such court, and may hear and receive from any impaneled petit jury any report, information or verdict, and make and cause to be entered any order or orders in reference thereto, or with reference to the continuation of the deliberation of such petit jury or their final discharge, as fully and completely as such absent district judge could do if personally present and presiding over such court; and may make any other order or orders in such courts respecting the causes therein pending or the procedure pertaining thereto, as the regular judge of said criminal district court could make if personally present and presiding. (Acts 1915, ch. 86, sec. 1.)

Art. 97*lll*. Criminal District Attorney; duties; salary; fees; accounting; assistants; oath; powers; report of expenses; election.—There shall be elected by the qualified electors of the Criminal Judicial District of Dallas county, Texas, an attorney for said district, who shall be styled the "Criminal District Attorney of Dallas county," and who shall hold his office for a period of two years and until his successor is elected and qualified. The said Criminal District Attorney shall possess all the qualifications and take the oath and give the bond required by the Constitution and laws of this State, of other district attorneys. (Acts 1917, ch. 121, sec. 2.)

It shall be the duty of said Criminal District Attorney or his assistants, as hereinafter provided to be in attendance upon each term of the "Criminal Court of Dallas County" and the "Criminal District Court No. 2 of Dallas County" and to represent the state in all matters pending before said courts. And he shall have exclusive control of all criminal cases wherever pending, or in whatever court in Dallas County that now has jurisdiction of criminal cases, as well as any or all courts that may hereafter be created and given jurisdiction in criminal cases,

and he shall have the fees therefor fixed by law. He shall also have control of any and all cases heard on habeas corpus before any civil district court of Dallas County, as well as before the Criminal Court of said county. The Criminal District Attorney of Dallas County shall have and exercise in addition to the specific powers given and the duties imposed upon him by this Act, all such powers, duties and privileges within said Criminal District of Dallas County as are by law now conferred, or which may hereafter be conferred upon district and county attorneys in the various counties and judicial districts of this state.

It is further provided that he and his assistants shall have the exclusive right and it shall be their sole duty to perform the duties provided for in this Act, except in cases of absence from the county of the Criminal District Attorney and his assistants, or their inability or refusal to act; and no other person shall have the power to perform the duties provided for in this Act, or to represent the state in any criminal case in Dallas County, except in case of the absence from Dallas county, or the inability or refusal to act of the Criminal District Attorney and his assistants. (Id. sec. 3.)

The said Criminal District Attorney of Dallas County shall be commissioned by the Governor and shall receive a salary of $500.00 per annum, to be paid by the state, and in addition thereto shall receive the following fees in felony cases, to be paid by the state; for each conviction of felonious homicide, where the defendant does not appeal or dies, or escapes after appeal and before final judgment of the Court of Criminal Appeals, or where, upon appeal, the judgment is affirmed, the sum of forty dollars. For all other convictions in felony cases, where the defendant does not appeal, or dies, or escapes, after appeal, and before final judgment of the Court of Criminal Appeals, or where, upon appeal, the judgment is affirmed, the sum of thirty dollars; provided, that in all convictions of felony, in which punishment is fixed by the verdict and judgment by confinement in the House of Correction and Reformatory, his fee shall be fifteen dollars. For representing the state in each case of habeas corpus where the defendant is charged with felony, the sum of twenty dollars. For representing the state in examining trials, in felony cases, where indictment is returned, in each case, the sum of five dollars. The Criminal District Attorney shall also receive such fees for other services rendered by him as is now, or may hereafter be authorized by law to be paid to other district and county attorneys in this state for such services. (Id. sec. 4.)

The Criminal District Attorney of Dallas County shall retain out of the fees earned and collected by him the sum of three thousand five hundred dollars per annum and in addition thereto one fourth of the gross excess of all such fees in excess of three thousand five hundred dollars per annum to an amount not in excess of two thousand dollars. The three fourth remaining to be applied first to the payment of the salaries of the Assistant District Attorneys and extra assistant District Attorneys and stenographer as hereinafter provided for. The remainder to be paid into the treasury of Dallas County; provided that in arriving at the amount collected by him he shall include the fees arising from all classes of criminal cases whether felony or misdemeanor arising in any of the courts in Dallas County now existing, or which may hereafter be created including habeas corpus hearing and fines and forfeitures; provided that after the 30th day of November and before the first day of January following of each year, he shall make a full and complete report and accounting to the county judge of Dallas County of all of such fees so collected by him; provided that in addition to the above he shall receive ten per cent for the collection of delinquent fees as is now provided by law relating to the collection of delinquent fees by county and district attorneys. Such fees however, to be included in the reports herein provided for and to be taken into consideration in arriving at the total maximum compensation provided in this Act. (Id. sec. 5.)

The Criminal District Attorney of Dallas County may appoint two assistants criminal district attorneys who shall each receive a salary of not to exceed eighteen hundred dollars per annum payable monthly, and four additional assistant district attorneys who shall each receive a salary of not to exceed fifteen hundred dollars a year payable monthly. He may appoint a stenographer who shall receive a salary of not more than twelve hundred dollars per annum payable monthly.

In addition to the assistant criminal district attorneys and stenographer above provided for, said Criminal District Attorney of Dallas County may, with the approval of the county judge and commissioners court of Dallas county, appoint as many additional extra assistant district attorneys as may be necessary to properly administer the affairs of the office of Criminal District Attorney and enforce the law, upon the Criminal District Attorney making application under oath addressed to the county judge of Dallas county, setting out the need therefor; provided, the county judge, with the approval of the commissioners court, may discontinue the services of any one or more of said extra assistant criminal district attorneys so appointed, the salary of said extra assistant criminal district attorney to be fixed by the commissioners court of Dallas county. (Id. sec. 6.)

The assistant criminal district attorneys and the extra assistant criminal district attorneys above provided for, when so appointed, shall take oath of office and be authorized to represent the state before said criminal district court, and in all other courts of Dallas county, in which the criminal district attorney of Dallas county is authorized by this Act to represent the state, such authority to be exercised under the direction of said criminal district attorney, and which said assistants shall be subject to removal at the will of the said criminal district attorney. Each of said assistant criminal district attorneys shall be authorized to administer oaths, file information, examine witnesses before the grand jury and generally perform any duty devolving upon the criminal district attorney of Dallas county, and to exercise any

power conferred by law upon the said criminal district attorney when by him so authorized. The criminal district attorney of Dallas county shall be paid the same fees for services rendered by his assistants as he would be entitled to receive if the services shall have been rendered by himself. (Id. sec. 7.)

The criminal district attorney of Dallas county is authorized, with the consent of the county judge and county commissioners of Dallas county, to appoint not to exceed two assistants in addition to his regular assistant criminal district attorneys, provided for in this Act, which two assistants shall not be required to possess the qualifications prescribed by law for district or county attorneys, and who shall perform such duties as may be assigned to them by the criminal district attorney, and who shall receive as their compensation one hundred dollars per month each, to be paid in monthly installments out of the county funds of Dallas county, Texas, by warrants drawn on such county fund; and provided further, that the criminal district attorney of Dallas county shall be allowed a sum of money by order of said commissioners court of Dallas county, as in the judgment of the commissioners court may be deemed necessary, to the proper administration of the duties of such office not to exceed, however, the amount of fifty dollars per month. Such amount as may be thus necessarily incurred shall be paid by the commissioners court upon affidavit made by the criminal district attorney of Dallas county, showing the necessity for such expenditure and for what the same was incurred. The commissioners court may also require any other evidence as in their opinion may be necessary to show the necessity for such expenditure, but they shall be the sole judge as to the necessity for such expenditure and their judgment allowing same shall be final. (Id. sec. 8.)

The criminal district attorney shall at the close of each month of the tenure of such office make, as a part of the report required by this Act, an itemized and sworn statement of the actual and necessary expenses incurred by him in the conduct of his said office, such as stamps, stationery, books, telephone, traveling expenses and other necessary expenses. If such expenses be incurred in connection with any particular case such statement shall name such case. Such expense account shall be subject to the audit of the county auditor and if it appears that any item of such expenses was not incurred by such officer or that such item was not necessary thereto, such item may be by the said auditor rejected, in which case the correction of such item may be adjudicated in any court of competent jurisdiction. The amount of such expense shall be deducted by the criminal district attorney of Dallas county in making such a report from the amount if any due by him to the county under the provisions of this Act. (Id. sec. 9.)

The criminal district attorney of Dallas county, as provided for in this Act, shall be elected by the qualified electors of the criminal judicial district of Dallas county at the next general election, and it is provided and directed that the present county attorney of Dallas county, Texas shall continue in office and assume the duties and be known as the criminal district attorney of Dallas county, Texas, and proceed to organize and arrange the affairs of the office of criminal district attorney of Dallas county, and appoint assistants as provided for in this Act and receive the fees provided for in this Act for such office until the next general election and until the criminal district attorney of Dallas county shall be elected and qualified. (Id. sec. 10.)

HARRIS COUNTY

Art. 97m. Galveston and Harris counties criminal judicial district changed to include only Harris county; criminal district court of Harris county created; original jurisdiction.—The territorial limits of the Criminal Judicial District composed of the counties of Galveston and Harris is hereby changed so as to hereafter include Harris county alone, and there is hereby created and established in the city of Houston, in the county of Harris, a Criminal District Court, which shall have original and exclusive jurisdiction over all criminal cases, both felony and misdemeanor, in the county of Harris, of which district and county courts under the Constitution and laws of this State, have original and exclusive jurisdiction, and shall be known as "The Criminal District Court of Harris County." (Acts 1911, p. 111, ch. 67, sec. 1; Rev. Civ. St. 1911, art. 2216 superseded.)

Art. 97mm. Appellate jurisdiction.—The said court shall have exclusive appellate jurisdiction over all criminal cases tried and determined by justices of the peace, mayors and recorders in said county of Harris, under the same rules and regulations as are provided by law for appeals from justices of the peace, mayors and recorders to the county courts in criminal cases. (Id. sec. 2; Rev. Civ. St. 1911, art. 2217 superseded.)

Art. 97n. May grant habeas corpus, etc.—The judge of said court hereinafter provided for shall have power to grant writs 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. (Id. sec. 3; Rev. Civ. St. 1911, art. 2218 superseded.)

Art. 97nn. Jurisdiction over bail bonds, etc.—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 thereof, and final judgments, and enforce the collection of the same by proper process in the same manner as is provided by law in district courts. (Id. sec. 4; Rev. Civ. St. 1911, art. 2220 superseded.)

Art. 97nnn. Jurisdiction over cases transferred.—Said court shall have jurisdiction over all criminal cases heretofore transferred from other courts to the Criminal District Court of Harris County as heretofore established, and over such criminal cases as may hereafter be transferred to the court created by this Act, as fully in all respects as if said cases had originated in said court. (Id. sec. 5; Rev. Civ. St. 1911, art. 2219 superseded.)

Art. 97o. Seal of court.—The said Criminal District Court of Harris County shall have a seal similar to the seal of the district

court, with the words, "Criminal District Court of Harris County" engraved thereon, an impression of which seal shall be attached to all writs and other process, except subpœnaes issuing from said court, and shall be used in the authentication of all official acts of the clerk of the said court. (Id. sec. 6; Rev. Civ. St. 1911, art. 2221 superseded.)

Art. 97*oo*. Rules of practice; pleading and evidence.—The practice in said court shall be conducted according to the laws governing the practice in the district court, and the rules of pleading and evidence in the district court shall govern in so far as the same may be applicable. (Id. sec. 7; Rev. Civ. St. 1911, art. 2223 superseded.)

Art. 97p. Selection, etc., of juries.—All laws regulating the selection, summoning, and impaneling of grand and petit jurors in the district court shall govern and apply in the criminal district court in so far as the same may be applicable; provided, that the clerk of the district court of Harris county shall assist in drawing the names of the jurors for said criminal court as is now provided by law. (Id. sec. 8; Rev. Civ. St. 1911, art. 2224 superseded.)

See, also, post, art. 645a.

Art. 97pp. Procedure.—All rules of the criminal procedure governing the district and county courts shall apply to and govern said criminal district court. (Id. sec. 9; Rev. Civ. St. 1911, art. 2225 superseded.)

Art. 97ppp. Terms of court.—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 in May, one term beginning the first Monday in August, one term beginning on the first Monday in November and one term beginning on the first Monday in February of each year. Each term shall continue until the business is disposed of. (Acts 1903, ch. 18; Acts 1911, p. 112, ch. 67, sec. 11; Rev. Civ. St. 1911, art. 2222 superseded.)

Art. 97q. Extension of term.—Whenever the Criminal District Court of Harris County shall be engaged in the trial of any cause when the time for the expiration of the term of said court as fixed by law shall arrive, the judge presiding shall have the power and may, if he deems it expedient, continue the term of said court until the conclusion of such pending trial; in such case the extension of such term shall be shown on the minutes of the court before they are signed. (Acts 1911, ch. 67, sec. 12.)

Art. 97qq. Sheriff of Harris county shall attend, etc.—The sheriff of Harris county and his deputies shall attend upon said court and execute all the process issuing therefrom and perform all duties required by said court or the judge thereof, and shall perform all such services for said court as sheriffs and constables are authorized or required to perform in and for other district courts of this State and he shall receive the same fees for his services as are provided by law for the same services in the district court. (Id. sec. 13; Rev. Civ. St. art. 2226 superseded.)

Art. 97r. Same powers as district court.—In all matters over which said criminal district court has jurisdiction, it shall have the same power within said district as is conferred by law upon the district court, and shall be governed by the same rules in the exercise of such power. (Id. sec. 14; Rev. Civ. St. 1911, art. 2227 superseded.)

Art. 97rr. Appeals and writs of error.—Appeals and writs of error may be prosecuted from the said criminal district court to the court of criminal appeals, in the same manner and form as from district courts in like cases. (Id. sec. 15; Rev. Civ. St. 1911, art. 2228 superseded.)

Art. 97rrr. Harris county separate criminal judicial district judge, clerk, and district attorney, how elected; duties and powers.—The county of Harris is hereby created a separate criminal judicial district and at the next general election after this Act shall take effect, there shall be elected in and for said district a criminal district judge, a criminal district clerk and a district attorney, each of whom shall have and exercise, respectively, the same duties, powers and authority within said county as are now possessed and exercised by the judge of the criminal district court, the clerk of the criminal district court, and the district attorney for the criminal district composed of Galveston and Harris Counties, and such other duties as are prescribed herein. (Acts 1911, p. 113, ch. 67, sec. 16.)

Art. 97s. Abolished as to Galveston county; transfer of cases; jurisdiction of district and county courts, etc.; compensation of district clerk; special deputy clerks; duty of county attorney, etc.—From and after the taking effect of this Act, the criminal district now composed of Galveston and Harris counties shall cease to exist so far as it embraces Galveston county, and all cases of felony that are then pending on the docket of the Criminal District Court of Galveston County shall be at once transferred to the district courts in said county of the Tenth and Fifty-sixth Judicial Districts, the felony cases on said docket of even numbers shall be transferred to the district court for the Tenth Judicial District and the felony cases on said docket of odd numbers shall be transferred to the district court for the Fifty-sixth Judicial District, and the said district court for the Tenth Judicial District and the said court for the Fifty-sixth Judicial District are hereby vested with concurrent exclusive jurisdiction of all felony cases arising in the county of Galveston, and the judges of said courts are hereby vested with all powers, privileges, and authority given by the Constitution and laws of this State in criminal matters, to the district courts of this State; and the judge of the district court for the Tenth Judicial District and the judge of the district court for the Fifty-sixth Judicial District shall alternately impanel grand juries in said county of Galveston in the same manner provided therefor by the judges of the district courts of this State; and from and after taking effect of this Act, all cases of misdemeanor pending on the docket of the Criminal District Court of Galveston County shall be transferred to the County Court of Galveston County, Texas, unless there be a county court at law of said county, in which event they shall be transferred to the latter court; and said county court and the judge thereof is hereby vested with all the powers, privileges and authority in criminal cases that are conferred by the laws of this State on the county court; and the clerk of

the District Court of Galveston County is hereby vested with the powers, duties and authority in criminal matters in cases of felony that are now conferred by law on clerks of the district court in this State, and shall be the custodian of the records in felony cases transferred from said Criminal District Court and hereafter arising in the county of Galveston; and the clerk of the County Court of Galveston County is hereby vested with the powers, duties and authority in criminal matters in cases of misdemeanor as are now conferred by law on the clerks of the county courts of this State, and such clerk shall be the custodian of the papers and records of misdemeanor cases arising in such county after such transfer, and the clerk of the Criminal District Court of Galveston County shall at once make the transfer of cases herein provided and turn over the papers and records of his office to the clerk of the district court and the clerk of the County Court of Galveston County as herein provided. The clerk of the district court shall file and docket the even numbered felony cases in the court of the Tenth Judicial District and the odd numbered felony cases in the court of the Fifty-sixth Judicial District, but any case pending in either of said courts may, in the discretion of the judge thereof, be transferred by one of said district courts to the other, and in case of the disqualification of the judge of either of said courts and in any case, such case on his suggestion of disqualification shall stand transferred to the other of said courts and docketed by the clerk accordingly. All writs and process heretofore, or that may hereafter be issued, up to the time this Act shall take effect, which are made returnable to the Criminal District Court of Galveston and Harris Counties, shall be returnable to the court to which the cause has been or may be transferred in like manner as if originally made returnable to said court and all writs and process are hereby validated.

The district clerk of Galveston county shall receive the sum of $600.00 per annum, to be paid by the county of Galveston for ex officio services, and receive the same fees in criminal cases as fixed by law in felony cases, and the county clerk shall receive the sum of $600.00 per annum for ex officio services and be entitled to such fees as are provided by law in misdemeanor cases.

The county commissioners court shall have authority to pay for the services of a special deputy district or county clerk, or both, if in their judgment such shall be required; such assistant to be appointed by the clerk of the court in which his services are needed. The county attorney and his assistant shall conduct all prosecutions in said district and county courts and county court at law and said county attorneys and the clerks of said court shall receive such fees as are now or may hereafter be provided for by law. (Id. sec. 17.)

Art. 97ss. Continuation in matters of jurisdiction, records and procedure of former court.—The Criminal District Court of Harris County herein provided for shall, from and after the time when this Act takes effect, be taken and deemed to be, in respect to all matters of jurisdiction, records and procedure a continuation of the Criminal District Court of Galveston and Harris Counties as now organized for Harris county, it being the intention of this Act to reduce the territorial limits of the Criminal Judicial District of Galveston and Harris Counties to Harris county alone. (Id. sec. 17a.)

Art. 97sss. Judge, how elected; term; qualifications; salary; powers and duties.—The judge of the Criminal District Court of Harris County shall be elected by the qualified voters of said county for a term of four years and shall hold his office until his successor is elected and qualified. He shall possess the same qualifications as are required of the judges of the district court and shall receive the salary and compensation as is now, or may hereafter be provided for district judges of this State, to be paid in the same manner as the salary and compensation of other district judges is paid. Said judge of said criminal district court shall have and exercise all the powers and duties which are now, or hereafter may be by law vested in and exercised by district judges of this State in criminal cases. The judge of said court may exchange with other district judges, as provided by law, and the said judge shall have all the power within said criminal district which is by the Constitution and laws of this State vested in district judges of their respective judicial districts, except that the jurisdiction and authority of said criminal district judge shall be limited to criminal cases, and to the exercise of such powers and the granting of such writs and process as may be necessary or incidental to the exercise of such criminal jurisdiction. (Id. sec. 18; Rev. Civ. St. 1911, arts. 2202–2207 superseded.)

Art. 97ssss. Judge may be removed from office.—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. (Acts 1870, p. 37, sec. 8; P. D. 6142; Rev. Civ. St. 1911, art. 2206.)

Art. 97t. Criminal district attorney of Harris county; how elected; term; qualifications; bond; duties and powers.—There shall be elected by the qualified electors of the criminal district of Harris county, Texas, an attorney for said court who shall be styled "the Criminal District Attorney of Harris County," and who shall hold his office for a period of two years and until his successor is elected and qualified. The said criminal district attorney shall possess all of the qualifications and take the oath and give the bond required by the constitution and laws of this state, of other district attorneys. It shall be the duty of said criminal district attorney, or of his assistants, as hereinafter provided, to be in attendance upon each term of said criminal district court of Harris county and to represent the state in all matters pending before said court. And he shall have exclusive control of all criminal cases wherever pending, or in whatever court in Harris county that now has jurisdiction of criminal cases, as well as any or all courts that may be hereafter created and given jurisdiction of any criminal cases, and he shall collect the fees therefor provided by law. He shall also have control of any and all cases heard on habeas corpus before any civil district court of Har-

ris county, as well as before the criminal court of said county. The criminal district attorney of Harris county shall have and exercise, in addition to the specific powers given and duties imposed upon him by this Act, all such powers, duties and privileges, within said criminal district of Harris county as are by law now conferred or which may hereafter be conferred upon district and county attorneys in the various counties and judicial districts of this state. It is further provided that he and his assistants shall have the exclusive right, and it shall be their sole duty to perform the duties provided for in this Act, except in cases of the absence from the county of the criminal district attorney and his assistants, or their inability or refusal to act; and no other person shall have the power to perform the duties provided in this Act, or to represent the state in any case in Harris county, except in case of the absence from Harris county, or the disability or refusal to act, of the criminal district attorney and his assistants. (Acts 1911, p. 111, sec. 19.)

Art. 97tt. District attorney; how commissioned; salary and fees.—The said criminal district attorney of Harris county shall be commissioned by the governor and shall receive a salary of five hundred dollars per annum, to be paid by the state, and in addition thereto shall receive the following fees in felony cases, to be paid by the state: For each conviction of felonious homicide, where the defendant does not appeal or dies, or escapes after appeal and before final judgment of the court of criminal appeals, or where, upon appeal, the judgment is affirmed, the sum of forty dollars. For all other convictions in felony cases, where the defendant does not appeal, or dies, or escapes, after appeal, and before final judgment of the court of criminal appeals, or where, upon appeal, the judgment is affirmed, the sum of thirty dollars; provided, that in all convictions of felony, in which punishment is fixed by the verdict and judgment by confinement in the house of correction and reformatory, his fee shall be fifteen dollars. For representing the state in each case of habeas corpus where the defendant is charged with a felony, the sum of twenty dollars. For representing the state in examining trials, in felony cases, where indictment is returned, in each case, the sum of five dollars. The criminal district attorney shall also receive such fees in misdemeanor cases, to be paid by the defendant and by the county, as is now provided by law for district and county attorneys, and he shall also receive such compensation for other services rendered by him as is now, or may hereafter be, authorized by law to be paid to other district and county attorneys in this state. (Id. sec. 20.)

Art. 97ttt. What fees to be retained, etc.; what fees included; report and accounting.—The criminal district attorney of Harris county shall retain out of the fees earned by him in the criminal district court of Harris county the sum of twenty-five hundred dollars per annum, and in addition thereto, one-fourth of the gross excess of all fees in excess of twenty-five hundred dollars per annum, the three-fourths of the excess over and above twenty-five hundred dollars per annum, remaining, to be paid by him into the treasury of Harris county. It is provided that in arriving at the amount collected by him, he shall include the fees arising from all classes of criminal cases of which the criminal district court of Harris county has original and exclusive jurisdiction, whether felony, misdemeanor, habeas corpus hearings, or commission on fines and forfeitures collected in said court, it being the intention of this Act that the criminal district attorney of Harris county shall include all fees of every kind and class earned by him in said criminal district court in arriving at the amount collected by him; it being further provided that at the end of each year he shall make a full and complete report and accounting to the county judge of Harris county of the amount of such fees collected by him. (Id. sec. 21.)

Art. 97u. Same; assistants and stenographer; salaries; oath; removal; powers of assistants; fees.—The Criminal District Attorney of Harris County shall appoint two assistant criminal district attorneys, who shall each receive a salary of eighteen hundred dollars per annum, payable monthly. He shall also appoint a stenographer, who shall receive a salary of not more than twelve hundred dollars per annum, payable monthly. In addition to the assistant criminal district attorneys and stenographer, above provided for, the county judge of Harris County may, with the approval of the commissioners' court, appoint as many additional assistants as may be necessary to properly administer the affairs of the office of Criminal District Attorney and enforce the law, upon the Criminal District Attorney making application under oath, addressed to the County Judge of Harris County, setting out the need therefor, provided, the county judge, with the approval of the commissioners' court may discontinue the service of any one or more of the assistant criminal district attorneys provided for in this Act, when in his judgment and of the judgment of the commissioners' court, they are not necessary; provided that the additional assistants appointed by the county judge as herein provided for shall receive not more than $1,800.00 per year, payable monthly. The salaries of all assistants shall be paid by Harris County; provided that if the above salaries be insufficient and inadequate for the proper investigation of crime in Harris County and the efficient performance of the duties of said office, then the Criminal District Attorney may contract for and pay such additional compensation as is necessary for the proper and efficient discharge of his duties, out of the excess fees collected by him which would otherwise go to the county, a detailed itemized statement, under oath, of which he shall include in his annual report to the County Judge of Harris County, to be approved by the county auditor, but in no event shall the county be liable for such extra compensation. Provided further that before said Criminal District Attorney shall pay such extra compensation he shall secure the written approval of a majority of the District Judges of Harris County. The assistant criminal district attorneys above provided for, when so appointed, shall take the oath of office and be authorized to represent the State before said

Criminal District Court, and in all other courts in Harris County in which the Criminal District Attorney of Harris County, is authorized by this Act to represent the State, such authority to be exercised under the direction of the said Criminal District Attorney, and which assistants shall be subject to removal at the will of the said Criminal District Attorney. Each of said assistant criminal district attorneys shall be authorized to file informations, examine witnesses before the grand jury and generally to perform any duty devolving upon the Criminal District Attorney of Harris County, and to exercise any power conferred by law upon the said Criminal District Attorney when by him so authorized. The Criminal District Attorney of Harris County shall be paid the same fees for services rendered by his assistants as he would be entitled to receive if the services should have been rendered by himself. Provided, further, that the $2,500 in fees and the one-fourth of the excess fees heretofore provided for shall in no event exceed the total sum of $6,000 per year as compensation to said District Attorney, and any amount in excess thereof shall be turned in to the County Treasurer. (Acts 1911, ch. 67, sec. 22; Acts 1915, ch. 14, sec. 1; Acts 1917, ch. 42, sec. 1.)

Art. 97uu. Clerk, how elected; term; fee; salary; powers and duties; deputies.—The clerk of the Criminal District Court of Harris County shall be elected by the qualified voters of Harris county, and shall hold his office for a term of two years, and until his successor is elected and qualified. Said clerk shall receive such fees as are now or may hereafter be prescribed by law to be paid to the clerk of the district courts of this State, and to be paid and collected in the same manner; and in addition thereto, he shall receive an annual salary of one thousand dollars, to be paid out of the treasury of Harris county monthly. Said clerk shall have the same power and authority, and shall perform the same duties with respect to said Criminal District Court of Harris County as are by law conferred upon the clerks of other district courts in criminal cases, and shall have authority to appoint one or more deputies as needed, whose salary shall be paid by said clerk. Said deputies shall take the oath of office prescribed by the Constitution of this State, and said deputies are authorized to perform such services as may be authorized by said criminal district clerk, and shall be removable at the will of the clerk. (Acts 1911, p. 117, ch. 67, sec. 23; Rev. Civ. St. 1911, arts. 2208–2215 superseded.)

Art. 97uuu. Clerk to give bond.—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. (Acts 1870, p. 37, sec. 9; P. D. 6143; Rev. Civ. St. 1911, art. 2209.)

Art. 97uuuu. Clerk shall take oath of office.—The said clerk shall also take and subscribe the oath of office prescribed by the constitution of the state. (Id.; Rev. Civ. St. 1911, art. 2210.)

Art. 97uuuuu. Bond and oath of clerk shall be recorded.—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 in which the clerk of said criminal district court has been appointed. (Id.; Rev. Civ. St. 1911, art. 2211.)

Art. 97uuuuuu. Filling vacancy in office of clerk.—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. (Id.; Rev. Civ. St. 1911, art. 2215.)

Art. 97v. Judge, attorney and clerk to continue in office until, etc.; clerk to be appointed.—The criminal district judge and the criminal district attorney of the criminal judicial district composed of Galveston and Harris counties, who shall be in office at the time when this Act goes into effect, shall continue in office, respectively, as the judge and the district attorney of the Criminal District Court of Harris County until the next general election, or until their successors shall be elected and qualified.

The clerk of the Criminal District Court of Harris County who shall be in office at the time when this Act goes into effect shall continue in office as clerk of the Criminal District Court of Harris County until January 1, A. D. 1912, and until his successor is appointed and qualified.

The Governor shall, on January 1, 1912, or thereafter, appoint a clerk of the Criminal District Court of Harris County, who shall hold his office from January 1, A. D. 1912, until the next general election, or until his successor is elected and qualified. (Acts 1911, p. 111, sec. 24.)

TRAVIS AND WILLIAMSON COUNTIES

Art. 97vv. Court created; jurisdiction; appeals.—That there is hereby created and established for the Counties of Travis and Williamson a Criminal District Court, which shall have and exercise all of the criminal jurisdiction now vested in and exercised by the District Court of Travis and Williamson Counties, and said Criminal District Court shall try and determine all causes for divorce between husband and wife and adjudicate property rights in connection therewith in said two counties. All appeals from the judgments of said court shall be to the Court of Criminal Appeals, except appeals in divorce cases, under the same rules and regulations as are now or may hereafter be provided by law for appeals in criminal cases from district courts. (Acts 1915, ch. 17, sec. 4.)

Art. 97w. Other courts not to have criminal jurisdiction; pending causes; election of judge; qualifications and salary of judge; special and substitute judges; appointment of first incumbent.—From and after the time when this Act

shall take effect the Twenty-sixth District Court of Travis and Williamson Counties, and the Fifty-third District Court of Travis County shall cease to have and exercise any criminal jurisdiction in either of said counties; provided, however, that if there shall be any criminal case upon trial in either the Twenty-sixth or Fifty-third District Courts when this Act shall go into effect, such District Court shall retain jurisdiction of such case until such trial shall be concluded, and until appeal therein shall be perfected, if an appeal shall be made therein; and provided further, that nothing in this Act shall affect the jurisdiction of either the Twenty-sixth or Fifty-third District Courts to pronounce sentence in any criminal case tried in such courts before this Act takes effect, or which shall be on trial when this Act goes into effect. The judge of said Criminal District Court for the Counties of Travis and Williamson shall be elected by the qualified voters of Travis and Williamson Counties for a term of four years, and shall hold his office until his successor shall have been duly 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 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 immediately upon this Act taking effect appoint a judge of said court, who shall hold the office until the next general election after the passage of this Act and until his successor shall have been elected and qualified. (Id.)

Art. 97ww. Seal.—Said Criminal District Court shall have a seal in like design as the seal now provided by law for District Courts, except for Travis County the words "Criminal District Court of Travis County, Texas," shall be engraved around the margin thereof; and for Williamson County the words, "Criminal District Court of Williamson County, Texas," shall be engraved around the margin thereof. (Id.)

Art. 97x. Terms.—The terms of said Criminal District Court shall be held each year as follows: in the County of Williamson on the first Monday in January, May and September, and continue in session for four weeks, unless continued longer by the judge thereof by an order duly entered; in Travis County on the first Monday in February, and may continue in session to and including the last Saturday before the first Monday in April; on the first Monday in June, and may continue to and including the first Saturday after the third Monday in July; and on the first Monday in October, and may continue in session to and including the last Saturday before the twenty-fifth of December, unless continued longer by the judge of said court by an order duly entered. (Id.)

Art. 97xx. Procedure.—The trials and proceedings in said Criminal District Court shall be conducted in criminal cases according to the laws governing pleadings, practice and proceedings in criminal cases in the district courts. (Id.)

Art. 97y. Grand and petit jurors.—A grand jury shall be drawn and selected for each term of said court held in Travis County and for each term of said court held in Williamson County in the manner now provided by law, and all grand and petit juries for criminal cases drawn and selected for the Twenty-sixth and Fifty-third District Courts under existing laws at the time this Act takes effect shall be as valid as if no change had been made, and the persons constituting such juries shall be required to appear and serve at the next ensuing term of this court as fixed by this Act, and their acts shall be as valid as if they had served as jurors in the court for which they were originally drawn, and all laws regulating the selection, summoning and impaneling of grand and petit juries in the District Court shall govern said Criminal District Court, and jury commissioners shall be appointed for drawing juries for said court as is now or may hereafter be required by law in district courts, and under like rules and regulations. (Id.)

Art. 97yy. Transfer of causes.—Immediately upon the taking effect of this Act the criminal cases and divorce cases now pending in the twenty-sixth and fifty-third District Courts in the respective counties of Travis and Williamson, together with all records and papers relating thereto, shall be transferred to said Criminal District Court in each respective county, except as otherwise provided in the foregoing paragraph "a" of Section 4 [Art. 97w]. (Id.)

Art. 97z. Pending proceedings.—All process and writs heretofore issued or served in criminal cases pending in the Twenty-sixth and Fifty-third District Courts in either Travis or Williamson Counties, returnable to either the Twenty-sixth or Fifty-third District Court, and all process and writs in criminal cases pending in either of said District Courts, heretofore issued or served, returnable to either the Twenty-sixth or Fifty-third District Court, shall be considered returnable to the Criminal District Court herein created, at the time as hereinafter prescribed, and all such process and writs are hereby legalized and validated as if the same had been made returnable to said Criminal District Court of Travis and Williamson Counties hereby created and at the time herein prescribed. And all bail bonds, bonds, and recognizances in criminal cases pending in said Twenty-sixth and Fifty-third District Courts when this Act takes effect, binding any person or persons to appear in either the Twenty-sixth or Fifty-third District Court shall have the effect to require such person or persons to appear at the first term of said Criminal District Court held in Travis County where said bail bond, bond, or recognizance has been given and taken in either the Twenty-sixth or Fifty-third District Court in Travis County; and at the first term of said Criminal District Court held in Williamson County where said bail bond, bond, or recognizance has been given and taken in the Twenty-sixth District Court in Williamson County, after the taking effect

of this Act, and there to remain in said court in said respective county, from day to day and from term to term until finally discharged under the same penalties provided by law in such cases, and to the same effect as if the case or matter was still pending in the District Court in which said bail bond, bond, or recognizance was originally given and taken, and all said bail bonds, bonds, and recognizances shall have the same validity and be as valid and binding as if this Act had not been passed. (Id.)

Art. 97zz. Clerk.—The clerk of the District Courts of Travis County as heretofore constituted, and his successors in office, shall be the clerk of the Twenty-sixth and Fifty-third District Courts, and also the clerk of the Criminal District Court in Travis County hereinafter created, and shall perform all the duties pertaining to all of said courts; and the clerk of the District Court of Williamson County, as heretofore constituted, and his successors in office, shall be the clerk of the Twenty-sixth District Court in Williamson County, and also the clerk of the Criminal District Court in Williamson County, Texas, hereinafter created, and shall perform all duties pertaining to both of said courts. (Id. sec. 3.)

Art. 97zzz. Sheriff and clerk.—The sheriff and clerk of the District Court of Travis County, as now provided for by law, shall be the sheriff and clerk, respectively, of said Criminal District Court in Travis County, and the sheriff and clerk of the District Court of Williamson County, now provided for by law, shall be the sheriff and clerk, respectively, of said Criminal District Court in Williamson County; and the district attorney of the Twenty-sixth and Fifty-third Judicial Districts elected and now acting for said districts, shall be district attorney for said Criminal District Court in both Travis and Williamson Counties, and hold his office until the time for which he has been elected district attorney for the Twenty-sixth and Fifty-third Judicial Districts shall expire; and until his successor is duly elected and qualified; and there shall be elected for two years beginning with the next general election after this Act takes effect, a district attorney for said Criminal District Court, whose powers and duties shall be the same as other district attorneys; and said clerk, sheriff and district attorney shall, respectively, receive such fees and salary as are now or may hereafter be prescribed by law for such offices in the District Courts of the State of Texas, to be paid in the same manner. (Id. sec. 4.)

NUECES, KLEBERG, WILLACY, AND CAMERON COUNTIES

Art. 97½. Court created; jurisdiction; appeals.—That there is hereby created and established for the Counties of Nueces, Kleberg, Willacy, and Cameron a Criminal District Court, which shall have and exercise all of the criminal jurisdiction now vested in and exercised by the district court of the 28th Judicial District of Texas and said Criminal District Court shall try and determine all causes for divorce between husband and wife and adjudicate property rights in connection therewith in said counties, and try and determine all causes for the collection of delinquent taxes and the enforcement of liens for the collection of same. All appeals from the judgments of said court shall be to the Court of Criminal Appeals, except appeals in divorce cases and suits for the collection of delinquent taxes, which shall be to the Court of Civil Appeals, under the same rules and regulations as now or may hereafter be provided by law for the appeals in criminal cases from district courts. (Acts 1916 [1917], ch. 46, sec. 1.)

Art. 97½a. Jurisdiction of regular district courts diminished.—From and after the time when this Act shall take effect, the district court of the 28th Judicial District composed of the Counties of Nueces, Kleberg, Willacy and Cameron shall cease to have and exercise any criminal jurisdiction in either of said counties and shall cease to have and exercise any jurisdiction of divorce cases in either of said counties, and shall cease to have and exercise any jurisdiction of suits for the collection of any delinquent taxes or the enforcement of liens for same; provided, however, that if there shall be any criminal case on trial in the 28th Judicial District Court, when this Act shall go into effect, such district court shall retain jurisdiction of such case until such trial shall be concluded and until appeal therein shall be perfected if an appeal shall be made therein; and provided further that nothing in this Act shall affect the jurisdiction of the 28th District Court to pronounce sentence in any criminal case tried in such court before this Act takes effect, or which shall be on trial when this Act goes into effect. (Id. sec. 2.)

Art. 97½b. Election of judge; qualifications; powers and duties; exchange, disqualication, etc.—The judge of said Criminal District Court for the Counties of Nueces, Kleberg, Willacy and Cameron shall be elected by the qualified voters of said counties for a term of four years, and shall hold his office until his successor shall have been duly elected and qualified. He shall possess the same qualifications as are required of the judge of the district court, and shall receive the same salary as is now or may hereafter be paid to 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 or 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, immediately upon this Act taking effect, appoint a judge of said court, who shall hold the office until the next general election after the passage of this Act and until his successor shall have been elected and qualified. (Id. sec. 3.)

Art. 97½c. Sheriff and clerk; district attorney; fees and salaries.—The sheriff and clerk of the district court of Nueces County, as now provided by law, shall be the sheriff and clerk, respectively, of said Criminal District Court of Nueces County; and the sheriff and clerk of the district court of Kleberg County, as now provided by law, shall be the sheriff and clerk, respectively, of the Criminal District Court of Kleberg County, as now provided by law, shall be

the sheriff and clerk, respectively of the Criminal District Court of Kleberg County, and the sheriff and clerk of the district court of Willacy County, as now provided by law, shall be the sheriff and clerk, respectively, of the Criminal District Court of Willacy County; and the sheriff and clerk of the district court of Cameron County, as now provided by law, shall be the sheriff and clerk, respectively, of said Criminal District Court in Cameron County; and the district attorney of the 28th Judicial District elected and now acting for said district, shall be district attorney for said Criminal District Court in the Counties of Nueces, Kleberg, Willacy and Cameron, and shall hold his office until the time for which he has been elected district attorney for the 28th Judicial District of Texas shall expire, and until his successor is duly elected and qualified; and there shall be elected for two years, beginning with the next general election after this Act takes effect, a district attorney for said Criminal District Court, whose powers and duties shall be the same as other district attorneys; and said clerk, sheriff and district attorney shall, respectively, receive such fees and salaries as are now or may hereafter be prescribed by law for such officers in the district courts of the State of Texas, to be paid in the same manner. (Id. sec. 4.)

Art. 97½d. Seal.—Said Criminal District Court shall have a seal in like design as the seal now prescribed by law for district courts, except for Nueces County, the words "Criminal District Court of Nueces County, Texas," shall be engraved around the margin thereof; and for Kleberg County, the words "Criminal District Court of Kleberg County, Texas," shall be engraved around the margin thereof; and for Willacy County the words "Criminal District Court of Willacy County, Texas," shall be engraved around the margin thereof; and for Cameron County the words "Criminal District Court of Cameron County, Texas," shall be engraved around the margin thereof. (Id. sec. 5.)

Art. 97½e. Terms of court.—That the terms of the said Criminal District Court shall be held in said Twenty-eighth Judicial District each year as follows:

In the County of Willacy on the first Monday in January of each year and may continue in session two weeks; and on the last Monday in July of each year and may continue in session two weeks.

In the County of Cameron on the second Monday after the first Monday in January of each year and may continue in session seven weeks; and on the fifth Monday after the last Monday in July of each year and may continue in session seven weeks.

In the County of Kleberg on the ninth Monday after the first Monday in January of each year and may continue in session three weeks; and on the second Monday after the last Monday in July and may continue in session three weeks.

In the County of Nueces on the twelfth Monday after the first Monday in January of each year and may continue in session eleven weeks; and on the twelfth Monday after the last Monday in July and may continue in session nine weeks. (Acts 1916 [1917] ch. 46, sec. 6; Acts 1917, ch. 82, sec. 1.)

Art. 97½f. Procedure.—The trials and proceedings in said criminal district shall be conducted in criminal cases according to the laws governing pleadings, practice and proceedings in criminal cases in the district courts. (Acts 1916 [1917] ch. 46, sec. 7.)

Art. 97½g. Grand and petit juries.—A grand jury shall be drawn and selected for each term of said court held in Nueces, Kleberg, Willacy and Cameron Counties in the manner now provided by law, and all grand and petit jurors for criminal cases drawn and selected for the 28th Judicial District Court under existing laws at the time this Act takes effect, shall be as valid as if no change had been made, and the persons constituting such juries shall be required to appear and serve at the next ensuing term of this court as fixed by this Act, and their acts shall be as valid as if they had served as jurors in the court for which they were originally drawn, and all laws regulating the selection, summoning and impaneling of grand and petit jurors in the district court shall govern said criminal district court, and jury commissioners shall be appointed for drawing juries for said court as is now or may hereafter be required by law in district courts, and under like rules and regulations. (Id. sec. 8.)

Art. 97½h. Transfer of causes.—Immediately upon the taking effect of this Act, the criminal cases and tax suits and divorce cases now pending in the 28th Judicial District Court in the respective Counties of Nueces, Kleberg, Willacy and Cameron, together with all records and papers relating thereto, shall be transferred to said Criminal District Court in each respective county, except as otherwise provided in Section 2 [Art. 97½a] hereof. (Id. sec. 9.)

Art. 97½i. Process in divorce and tax suits; in criminal cases; bonds and recognizances.—All process and writs heretofore issued or served in divorce cases and suits for the collection of delinquent taxes pending in the 28th Judicial District Court in either Nueces, Kleberg, Willacy, or Cameron Counties, returnable to the 28th Judicial District Court, and all process and writs in criminal cases pending in said courts heretofore issued or served, returnable to said 28th Judicial District Court, shall be considered returnable to the Criminal District Court herein created, at the time as hereinafter prescribed, and all such process and writs are hereby legalized and validated as if the same had been made returnable to said Criminal District Court of Nueces, Kleberg, Willacy and Cameron Counties, hereby created, and at the time herein prescribed, and all bail bonds, bonds and recognizances in criminal cases pending in said 28th Judicial District Courts, when this Act takes effect, binding any person or persons to appear in said court in either of the counties named in this Act, shall have the effect to require such person or persons to appear at the first term of said Criminal District Court held respectively in Nueces, Kleberg, Willacy and Cameron Counties, where said bail bond, bond or recognizances has been given and taken in the 28th Judicial District Court, after the taking effect of the Act, and there to remain in said court in said respective county from day to day and from term to

term until fully discharged, under the same penalties as provided by law in such cases, and to the same effect as if the case or matter was still pending in the district court in which said bail bond, bond or recognizance was originally given and taken, and all said bail bonds, bonds and recognizances shall have the same validity and be as valid and binding as if this Act had not been passed, and at the first term of said Criminal District Court held in the counties where said bail bond, bond, or recognizance has been given and taken in the district court of the 28th Judicial District in said counties, respectively. (Id. sec. 10.)

TARRANT COUNTY

Art. 97½ii. Court created; jurisdiction.—There is hereby created and established at the city of Ft. Worth a Criminal District Court to be known as "Criminal District Court of Tarrant County," which Court shall have and exercise, from and after the taking effect of this Act, original and exclusive jurisdiction over all criminal cases of the grade of felony in the county of Tarrant of which district courts, under the Constitution and laws of this State, have original and exclusive jurisdiction, and shall have and exercise such concurrent jurisdiction with the county court of Tarrant county over misdemeanor cases as is hereinafter provided by this Act. (Acts 1917, ch. 77, sec. 1.)

Art. 97½iii. Same subject.—There is hereby created and established a Criminal Judicial District of Tarrant County, Texas, to be composed of the County of Tarrant, Texas, alone and which shall be co-extensive with the territorial boundaries and limits of said Tarrant County, and the Criminal District Court of Tarrant County, Texas, shall have and exercise all of the criminal jurisdiction of and for said Criminal District of Tarrant County, Texas, which is now conferred by law on said Criminal District Court. (Acts 1919, 2d C. S., ch. 80, sec. 1.)

Art. 97½j. Jurisdiction; transfer of causes.—From and after the time this Act shall take effect, the county court of Tarrant county and the Criminal District Court of Tarrant county created by this Act, shall have and exercise concurrent jurisdiction with each other in all misdemeanor cases of which the county court of Tarrant county may now, or may hereafter have exclusive jurisdiction; and of such misdemeanor cases as shall be filed in said county court on appeal from justices' or recorders' courts; and either the judge of said Criminal District Court, or the judge of said county court of Tarrant county, may upon motion of the county attorney of Tarrant county, or other officer representing the State in said courts, in his discretion transfer any cause or causes that may at any time be pending in his court to the other court by an order or orders entered upon the minutes of his court; and where such transfer or transfers, are made, the clerk of the court making such transfer shall certify to the clerk of the court to which such transfer is made a statement of the cause or causes so transferred giving the style and number of the same to the clerk of the court to which such transfer is made and shall accompany such statement with all the papers in said cause or causes so transferred and upon receipt of such statement and the papers in such cause or causes so transferred, the clerk of the court to which such transfer is made 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 the court to which such transfer or transfers are made shall dispose of said cause or causes in the same manner as if such cases were originally instituted in said court. (Acts 1917, ch. 77, sec. 2.)

Art. 97½jj. Jurisdiction over bail bonds, etc.—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 thereof and final judgments, and enforce the collection of the same by proper process in the same manner as is provided by law in district courts. (Id. sec. 3.)

Art. 97½k. Seal of court.—The said Criminal District Court of Tarrant county shall have a seal similar to the seal of the district court with the words "Criminal District Court of Tarrant county" engraved thereon, an impression of which seal shall be attached to all writs and other processes, except subpœnas, issuing from said court, and shall be used in the authentication of the official acts of the clerk of said court. (Id. sec. 4.)

Art. 97½kk. Procedure.—The practice in said court shall be conducted according to the laws governing the practice in the district court, and the rules of pleading and evidence in the district court shall govern insofar as the same may be applicable. (Id. sec. 5.)

Art. 97½*l*. Jury laws to apply.—All laws regulating the selection, summoning and impaneling of grand and petit jurors in the district court shall govern and apply in the Criminal District Court in so far as the same may be applicable. (Id. sec. 6.)

Art. 97½*ll*. Rules of criminal procedure.—All rules of criminal procedure governing the district and county courts shall apply to and govern said Criminal District Court. (Id. sec. 7.)

Art. 97½m. Terms of court; grand jury.—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 April, one term beginning the first Monday of July, one term beginning the first Monday of October, one term beginning the first Monday of January. Each term shall continue until the term ends by operation of law or the business is disposed of. The grand jury shall be impanelled in said court for each term thereof, unless otherwise directed by the judge of said Court. (Id. sec. 9.)

Art. 97½n. Continuance of term.—Whenever the Criminal District Court of Tarrant county shall be engaged in the trial of any cause when the time for expiration of the terms of said court as fixed by law shall arrive, the judge presiding shall have the power, and may, if he deems it expedient,

continue the term of said court until the conclusion of such pending trial; in such case, the extension of such term shall be shown on the minutes of the court before they are signed. (Id. sec. 10.)

Art. 97½nn. Officers.—The sheriff, county attorney, and the clerk of the district court of Tarrant county 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 of the district courts of this State; and said sheriff, county attorney and clerk shall respectively receive such fees as are now, or may hereafter be prescribed for such officers in the district courts of the State, to be paid in the same manner, provided that the clerk of the court herein created, shall receive as compensation for his services the sum of $125.00 (one hundred and twenty-five dollars) per month, to be paid as all the salaries of other clerks of criminal district courts in this State. (Id. sec. 11.)

Art. 97½o. Same powers as district court; rules.—In all such matters over which said Criminal District Court has jurisdiction, it shall have the same power within said district as is conferred by law upon the district court, and shall be governed by the same rules in the exercise of said power. (Id. sec. 12.)

Art. 97½oo. Appeal and error.—Appeals and writs of error may be prosecuted from said Criminal District Court to the court of criminal appeals in criminal cases and to the courts of civil appeals in the same manner and form as from district courts in like cases. (Id. sec. 13.)

Art. 97½p. Jurisdiction of district court.—From and after the taking effect of this Act, the district courts of Tarrant county as now constituted, shall be, and they are hereby deprived and divested of all jurisdiction in all criminal cases, and of all jurisdiction given the Criminal District Court of Tarrant county by this Act, and all criminal causes pending in said district courts at the time of the taking effect of this Act and all matters pertaining to criminal cases pending therein over which the court herein created is given jurisdiction, shall be, by the judges of the other district courts ordered transferred to and entered upon the docket of said Criminal District Court, and when so entered upon the docket, the judge of said Criminal District Court shall try and dispose of same in the same manner as if such cases were originally instituted therein. Provided that the other district courts of Tarrant county shall have jurisdiction concurrently with this court to empanel grand juries and to receive their bills of indictment and make proper transfer of same to the Criminal District Court. (Id. sec. 14.)

Art. 97½pp. Judge; election; term; qualifications; salary; powers; appointment.—The judge of said Criminal Court of Tarrant county shall be elected by the qualified voters of Tarrant 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 the judge of a 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 of this State in criminal cases. Provided, that the Governor, by and with the consent of the Senate, if in session, shall appoint a judge of said court who shall hold the office until the next general election after the passage of this Act, and until his successor shall have been elected and qualified. (Id. sec. 15.)

Art. 97½q. Exchange of judges; disqualification or absence.—The judge of said criminal district court may exchange districts with or hold court for any district judge, as provided by law in cases of district judges, and in case of disqualification or absence of a judge, a special judge may be selected. (Id. sec. 16.)

Art. 97½qq. Validation of process heretofore issued.—All orders heretofore made and all process heretofore issued in any criminal cause so transferred are hereby validated and made of full force and effect in the Criminal District Court of Tarrant county. (Id. sec. 17.)

Art. 97½r. Criminal district attorney; election; term of office; qualifications; oath; bond.—There shall be elected by the qualified electors of the Criminal Judicial District of Tarrant County, Texas, an Attorney for said District who shall be styled the "Criminal District Attorney of Tarrant County" and who shall hold his office for a period of two years and until his successor is elected and qualified. The said Criminal District Attorney shall possess all the qualifications and take the oath and give the bond required by the Constitution and laws of this State, of other District Attorneys. (Acts 1919, 2d C. S., ch. 80, sec. 2.)

Art. 97½rr. Same subject; powers and duties.—It shall be the duty of said Criminal District Attorney or his assistants as herein provided to be in attendance upon each term and all sessions of the Criminal District Court of Tarrant County, and of all sessions and terms of the County Court of Tarrant County, Texas, held for the transaction of criminal business, and to represent the State in all matters pending before said Courts, and to represent Tarrant County in all matters pending before such Courts, the Commissioners' Court of Tarrant County and Justice Courts and any other courts where said Tarrant County has pending business of any kind or matter of concern or interest. The Criminal District Attorney of Tarrant County shall have and exercise in addition to the specific powers given and the duties imposed upon him by this Act, all such powers, duties and privileges within such criminal district of Tarrant County as are by law now conferred, or which may hereafter be conferred upon District and County Attorneys in the various Counties and Judicial Districts of this State. (Id. sec. 3.)

Art. 97½s. Same subject; compensation.—Said Criminal District Attorney of Tarrant County shall be commissioned by the Governor and shall receive as salary and compensation the following and no more:

A salary of Five Hundred ($500.00) Dollars from the State of Texas, as provided in the Constitution of the State of Texas, for

the salary of District Attorney, and so much of the fees, commissions and perquisites earned by said office to make up the total compensation to the sum of Six Thousand ($6,000) Dollars; provided, that the amount of such salary, fees and perquisites to be received and retained by him shall never exceed the sum of Six Thousand ($6,000) Dollars in any one year; and, provided, further, that all salaries, fees, commissions and perquisites so earned and received by such office in excess of $6,000 during each and every fiscal year shall be paid into the County Treasury of said county in accordance with the terms and provisions of the maximum fee bill, except as to such portion of such excess as shall be used and expended in the payment of salaries to deputies, as hereinafter provided. (Id. sec. 4.)

Art. 97½ss. Same subjects; assistants.—The Criminal District Attorney of Tarrant County, for the purpose of conducting the affairs of such office, shall be and is hereby authorized, by and with the written consent of the County Judge of said county, to appoint such Assistant District Attorneys as are necessary to perform the duties and affairs of such office, not to exceed six in number; two of whom shall receive a salary not to exceed Twenty-five Hundred ($2,500.00) Dollars each per annum; two of whom shall receive a salary not to exceed Two Thousand ($2,000) Dollars each per annum; one of whom shall receive a salary not to exceed Eighteen Hundred ($1,800.00) Dollars per annum; one of whom to receive a salary not to exceed Fifteen Hundred ($1,500.00) Dollars per annum; all salaries payable monthly and the said salaries to be paid only out of the fees of office collected by such District Attorney. Said fees of office to be the same as are now allowed and permitted by law to be paid to the County Attorney of Tarrant County, Texas. The fixing of the amount of salaries to be paid by Tarrant County to said deputies shall be fixed and regulated by the Commissioners' Court of said county by an order passed at a regular session of said court and duly spread upon the minutes of said court. (Id. sec. 5.)

Art. 97½t. Same subject; assistants; oath, etc.—The Assistant Criminal District Attorneys above provided for when so appointed shall take the oath of office as such, and be authorized to represent the State before the Criminal District Court of Tarrant County in which the Criminal District Attorney of Tarrant County is authorized by this Act to represent the State, or to represent Tarrant County. Each of said Assistant Criminal District Attorneys shall be authorized to administer oaths, file information, examine witnesses before the Grand Jury, and generally to perform any duty devolving upon the Criminal District Attorney of Tarrant County, and to exercise any power conferred by law upon such Criminal District Attorney when by him so authorized and directed. (Id. sec. 6.)

Art. 97½tt. Same subject; powers; fees.—Said Criminal District Attorney of Tarrant County shall be clothed with all the powers and vested with all the rights and privileges conferred upon County Attorneys and District Attorneys of this state, and shall receive no salary or compensation or perquisites or fees of any character save those provided in Section 4 of this Act [Art. 97½s]. All fees or commissions from all sources, including fees and commissions in all criminal and civil cases, and for the prosecution of all tax suits, and from every other source, shall be turned over to the County Treasurer of said County by the said District Attorney, subject only to the payment of the salary of himself and his deputies, as provided in this Act. (Id. sec. 7.)

Art. 97½u. Same subject; election.—The Criminal District Attorney of Tarrant County, as provided for in this Act shall be elected by the qualified voters of the Criminal Judicial District of Tarrant County at the next general election, but it is provided and directed that the present County Attorney of Tarrant County shall continue in office and assume the duties and be known as the "Criminal District Attorney of Tarrant County" and shall proceed to organize and arrange the affairs of the office of the Criminal District Attorney of Tarrant County, and appoint Assistants as provided for in this Act, and receive the compensation and salary provided for in this Act for such office until the next general election, and until his successor shall be elected and qualified. Provided this Act shall not be construed as, creating any Court additional to those now existing in Tarrant County. (Id. sec. 8.)

Section 9 repeals all conflicting laws.

BOWIE COUNTY

Art. 97¾. Court created; jurisdiction.—There is hereby created for Bowie County a court called the "Criminal District Court of Bowie County," which shall sit and hold its sessions at the county seat of said county, or in the city of Texarkana, Texas, in said county. (Acts 1918, 4th C. S., ch. 28, sec. 1; Acts 1919, 2d C. S., ch. 8, sec. 1.)

Art. 97¾a. Jurisdiction; transfer of causes.—Said court is given original jurisdiction over all offenses of the grade of a felony, and over all offenses involving official misconduct, and over all offenses of the grade of a misdemeanor, and where such misdemeanor is committed inside the corporate limits of the city of Texarkana, Texas, in said county, its jurisdiction shall be concurrent with the jurisdiction of the corporation court of the city of Texarkana, Texas, and in all misdemeanor cases where the maximum punishment does not exceed a fine of two hundred ($200.00) dollars, its jurisdiction shall be concurrent with the justices courts and the corporation courts in said county, and it is given appellate jurisdiction over all misdemeanors tried in the justices courts and in the corporation courts in said county, except cases tried in the corporation court of the City of Texarkana, Texas, and where the judgment in said court on appeal from the lower courts named above does not exceed a fine of one hundred ($100.00) dollars, such judgment shall be final; said court is also given original jurisdiction over dependent and neglected children, and over delinquent children and over all juvenile cases and is made a juvenile court. The jurisdiction of the district court of Bowie County and the jurisdiction of the county court of Bowie County, and the corporation court of the City of Texarkana and the justices courts of Bow-

ie County and other inferior courts of Bowie County is hereby changed and made to conform to the jurisdiction of the criminal district court of Bowie County, as herein defined. (Acts 1918, 4th C. S., ch. 28, sec. 2; Acts 1919, 2d C. S., ch. 8, sec. 2.)

Art. 97¾aa. Jurisdiction over bail bonds, etc.—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 thereof and final judgments, and enforce the collection of the same by proper process in the same manner as provided by law in district courts. (Acts 1918, 4th C. S., ch. 28, sec. 3; Acts 1919, 2d C. S., ch. 8, sec. 3.)

Art. 97¾b. Seal of court.—The said criminal district court of Bowie County shall have a seal similar to the seal of the district court with the words "Criminal District Court of Bowie County" engraved thereon and an impression of which seal shall be attached to all writs and other processes, except subpœnas, issuing from said court, and shall be used in the authentication of the official acts of the clerk of said Court. (Acts 1918, 4th C. S., ch. 28, sec. 4; Acts 1919, 2d C. S., ch. 8, sec. 4.)

Art. 97¾bb. Procedure.—The practice in said court shall be conducted according to the laws governing the practice in the district court, and the rules of pleading and evidence in the district court shall govern insofar as the same may be applicable. (Acts 1918, 4th C. S., ch. 28, sec. 5; Acts 1919, 2d C. S., ch. 8, sec. 5.)

Art. 97¾c. Jury laws to apply.—All laws regulating the selection, summoning and impaneling of grand and petit jurors in the district court shall govern and apply in the criminal district court in so far as the same may be applicable. (Acts 1918, 4th C. S., ch. 28, sec. 6; Acts 1919, 2d C. S., ch. 8, sec. 6.)

Art. 97¾cc. Rules of criminal procedure.—All rules of criminal procedure governing the district and county courts shall apply to and govern said criminal district court. (Acts 1918, 4th C. S., ch. 28, sec. 7; Acts 1919, 2d C. S., ch. 8, sec. 7.)

Art. 97¾d. Terms of court; grand jury.—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 April, one term beginning the first Monday of July, one term beginning the first Monday of October, one term beginning the first Monday of January. Each term shall continue until the term ends by operation of law or the business is disposed of. The grand jury shall be impanelled in said court for each term thereof, unless otherwise directed by the judge of said court. (Acts 1918, 4th C. S., ch. 28, sec. 9; Acts 1919, 2d C. S., ch. 8, sec. 9.)

Art. 97¾e. Continuance of term.—Whenever the criminal district court of Bowie County shall be engaged in the trial of any cause when the time for expiration of the terms of said court as fixed by law shall arrive, the judge presiding shall have the power, and may, if he deems it expedient, continue the term of said court until the conclusion of such pending trial; in such case the extension of such term shall be shown on the minutes of the court before they are signed. (Acts 1918, 4th C. S., ch. 28, sec. 10; Acts 1919, 2d C. S., ch. 8, sec. 10.)

Art. 97¾ee. District attorney and county attorney.—The district attorney for the fifth judicial district of Texas, which includes Bowie County, shall represent the pleas of the State in all felony cases and such other duties as are now, or may hereafter be imposed by law upon district attorneys in this state, in said criminal district court hereby created, and shall receive such fees and compensation therefor as are now, or may hereafter be prescribed by law for such officers in the district courts of this state, to be paid in the same manner and out of the same funds. The county attorney of Bowie County, Texas, shall represent the pleas of the state in misdemeanor cases, and in such other matters as are now, or may hereafter be prescribed and provided for as to county attorneys under the laws of this state in the criminal district court hereby created, and shall receive such fees therefor as are now, or may hereafter be prescribed and provided for as to county attorneys under the laws of this state in the criminal district court hereby created, and shall receive such fees therefor as are now or may hereafter be prescribed by law for such officers in the county and district courts of this state, to be paid in the same manner and out of the same funds. (Acts 1918, 4th C. S., ch. 28, sec. 11; Acts 1919, 2d C. S., ch. 8, sec. 11.)

Art. 97¾f. Sheriff and clerk.—The sheriff and the clerk of the district court of Bowie County shall be the sheriff and clerk, respectively, of said criminal district court under the same rules and regulations as are are now or may hereafter be prescribed by law for the government of sheriffs and clerks of the district courts of this State; and said sheriff and clerk shall respectively receive such fees as are now, or may hereafter be prescribed for such officers in the district courts of the State, to be paid in the same manner. (Acts 1918, 4th C. S., ch. 28, sec. 12; Acts 1919, 2d C. S., ch. 8, sec. 12.)

Art. 97¾ff. Same powers as district court; rules.—In all such matters over which said criminal district court has jurisdiction, it shall have the same power within said district as is conferred by law upon the district court, and shall be governed by the same rules in the exercise of said power. (Acts 1918, 4th C. S., ch. 28, sec. 13; Acts 1919, 2d C. S., ch. 8, sec. 13.)

Art. 97¾g. Appeal and error.—Appeals and writs of errors may be prosecuted from said Criminal District Court to the court of criminal appeals in criminal cases and to the courts of civil appeals, in the same manner and form as from district courts in like cases. (Acts 1918, 4th C. S., ch. 28, sec. 14; Acts 1919, 2d C. S., ch. 8, sec. 14.)

Art. 97¾gg. Jurisdiction of district court.—From and after the taking effect of this Act, the district and county courts of Bowie County as now constituted, shall be and are hereby deprived and divested of all jurisdiction in all criminal cases and of all matters pertaining to criminal cases, and such jurisdiction is hereby given to the criminal district court of Bowie County.

And all criminal cases pending in the district and county courts of Bowie County at the time the Act creating this court took effect shall by force of this Act be immediately transferred to the criminal district court of Bowie County, without any order for any such transfer being made by either of said courts, and the jurisdiction of the criminal district court of Bowie County shall attach to all of said cases from the time the Act creating said court took effect. (Acts 1918, 4th C. S., ch. 28, sec. 15; Acts 1919, 2d C. S., ch. 8, sec. 15.)

Art. 97¾h. Judge; election; term; qualifications; salary; powers; appointment.—The judge of the criminal court of Bowie County shall be elected by the qualified voters of Bowie 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 judges of the district courts and shall receive the same salary as 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 and county judges of this state in criminal cases. Provided, that the Governor, by and with the consent of the Senate, if in session, shall appoint a judge of said court who shall hold the office until the next general election after the passage of this Act, and until his successor shall have been elected and qualified. (Acts 1918, 4th C. S., ch. 28, sec. 16; Acts 1919, 2d C. S., ch. 8, sec. 16.)

Art. 97¾hh. Exchange of judges; disqualification or absence.—The judge of said criminal district court may exchange districts with or hold court for any district judge, as provided by law in cases of district judges, and in case of disqualification or absence of a judge, a special judge may be selected, and qualify as provided for district courts. (Acts 1918, 4th C. S., ch. 28, sec. 17; Acts 1919, 2d C. S., ch. 8, sec. 17.)

Art. 97¾i. Validation of process heretofore issued.—All orders heretofore made and all process heretofore issued in any criminal cause so transferred, and up to the time of its transfer hereunder, are hereby validated and made of full force and effect in the criminal district court of Bowie County. (Acts 1918, 4th C. S., ch. 28, sec. 18; Acts 1919, 2d C. S., ch. 8, sec. 18.)

CHAPTER THREE B

CRIMINAL COURT OF PORT ARTHUR

Art. 97¾j. Court created; court of record; seal.—There is hereby created and established a court for the trial of criminal causes and offenses of a criminal nature arising within the territorial limits of the city of Port Arthur, Texas, which court shall be called "Criminal Court of Port Arthur, Texas," and shall hold its sessions in said city, shall be open at all times for the transaction of business, shall be a court of record, and shall have a seal. (Acts 1919, 2d C. S., ch. 14, sec. 1.)

Art. 97¾jj. Jurisdiction.—Said court shall have jurisdiction within the territorial limits of said city in all causes of a criminal nature arising under the ordinances of said city now in force or hereafter to be adopted; and also concurrently with any justice of the peace, in any precinct in which said city or any part thereof is situated and concurrently with the original jurisdiction of county courts and the county court of Jefferson County at law in all cases arising under the criminal laws of the State of Texas and under the juvenile, dependent and neglected children and delinquent children laws of said State. (Id. sec. 2.)

Art. 97¾k. Judge and other officers.—Said court shall be presided over by a judge, or in case of his disqualification, absence, or inability to act, by a special judge, each of whom shall be a man learned in the law and licensed to practice in the State courts of the State of Texas; and shall have a clerk and other officers, employés and complete organization as provided for corporation courts organized under the general laws of this State. The judge and city attorney of said court shall be elected by the qualified voters of said city of Port Arthur at each general primary and city election, shall qualify on the day that the commissioners of said city shall qualify, or as soon thereafter as practicable, and shall hold his office for two years and until his successor shall have been elected and qualified; providing such election shall be held by the regular officers holding the general primary and city election and the returns thereof shall be made to and canvassed by the commissioners of said city of Port Arthur, in the same manner as the other returns of said election; provided further, that when this bill becomes effective and to fill any vacancy in the office of said judge, the city commissioners of said city, shall call an election to elect a judge or city attorney of said court, who shall hold his office until the next general election; the special judge and other officers and employés of said court shall be appointed by the commission or governing body corresponding thereto of said city of Port Arthur, and they shall hold their offices or positions for such periods of time, not exceeding two years under any one appointment they shall be appointed for. The judge, city attorney and clerk of said court may be removed in the same manner as provided for the removal of county officers under the general laws of this State. The officers and employés of said court shall not receive any fees of office, but shall be paid such salaries as may be fixed by the governing body of the city, provided that the salary of the judge and city attorney of said court shall be fixed before his appointment or election and shall not be changed during any term of office, and that the special judge shall be paid only for the time he actually presides over said court and shall be paid at the same rate as the regular judge is paid. (Id. sec. 3.)

Art. 97¾kk. Conduct of prosecutions; appeals.—Prosecutions in said court shall be conducted by the city attorney of said city, if so designated or if he desires so to do, or when the prosecution is under the penal code of this State, by the county attorney of Jefferson county, but said county attorney shall not in any such case receive any fees or compensation therefor, nor have the power to dismiss any prosecution in said court, except for reasons filed and approved by the judge of said court. Said city attorney shall,

in all appeals to the Court of Criminal Appeals wherein the offense charged is in violation of a city ordinance, either brief said case or upon request, assist the Assistant Attorney General delegated to represent the State before the Court of Criminal Appeals in briefing the case. (Id. sec. 4.)

Art. 97¾*l*. Pleading, practice and procedure; reporter.—All rules of pleading, practice and procedure prescribed for corporation courts organized under the general laws of this State in cities having special charters shall apply in said court in so far as the same are applicable and not otherwise therein provided; provided all writs and process of said court may be served anywhere in Jefferson County, Texas, and may be directed to and served by the sheriff, or any deputy sheriff or constable of said county, or by any police officer of said city of Port Arthur; and any of said officers may under the direction of the judge of said court act as attendant, bailiffs and peace officers of said court; and provided the judge of said court may upon request of the defendant in any case therein appoint a competent and disinterested person as stenographer or reporter in and for such case, who shall take an oath to well, truly and impartially perform the duties of reporter in such case; it shall be his duty to make a full and correct report or record, of all oral testimony offered therein, of all objections to the admissibility of testimony, of all rulings and remarks of the court thereon, and of all exceptions to such rulings; and to keep such record for future use for the term of four years, and to furnish in duplicate to any person, upon payment therefor a transcript thereof or of any portion thereof certified to be true and correct, provided that any defendant who shall make an affidavit of his inability to pay for such duplicate copy shall be furnished with the same and the costs thereof shall be taxed as other costs in the case; he shall be paid at the rate of one ($1) dollar per hour for making said report and fifteen (15c) cents per folio of one hundred (100) words for the original copy and no charge for the duplicate copy of the transcript and all same so paid shall be taxed as costs. (Id. sec. 5.)

Art. 97¾*ll*. Jurors.—Jurors for said court shall be selected, summoned, empaneled and qualified from among the residents of said city of Port Arthur, liable for jury service under the general laws of this State, as follows: During the first month after the organization of said court, and thereafter during the months of December and June of each year, and at any time when there shall be an entire deficiency of jurors for said court and said judge thereof shall deem it expedient, the judge of said court shall appoint from among the residents of said city three (3) persons to perform the duties of jury commissioners of said court, who shall possess like qualifications and take the same oath, as jury commissioners for county courts, under the general laws of this State; and the same proceedings, so far as applicable, shall be had by said court and the officers thereof, and by such jury commissioners for procuring jurors for said court as are required by the general laws of this State for procuring jurors for county courts. Such commissioners shall select and place in the jury wheel the number of jurors for each week of the period for which juries are to be provided that shall be designated by the judge of said court; provided, that whenever for any reason, there is a partial or total deficiency of jurors present for the trial of any case or to serve for any day or week, then the judge of said court may in his discretion order the chief of police or any policeman of said city after taking the oath prescribed by the general laws, to summon sufficient number of qualified persons to make up the requisite number of jurors. Each juror, except those excused at their own request before, or on first call of the jury shall receive a fee of one dollar for each half day he may attend; that the jury wheel is to be used in all cases where a jury is demanded. (Id. sec. 6.)

Art. 97¾*m*. Powers of judge; docket.—The judge of said court shall have the power to punish for contempt to the same extent and under the same circumstances as is conferred upon judges of county courts. He shall have the power to take and forfeit recognizonces, to admit to bail and forfeit bonds under such rules and regulations as now govern the taking and forfeiture of the same in the county courts; provided, however, that in the forfeiture of any recognizance or bail bond, the sureties shall be cited to appear before such court on a date fixed by the court, not less than ten (10) days, nor more than fifteen (15) days from the entry of the order of forfeiture and judgment nisi, then and there to show cause why such judgment nisi should not be made final, in the manner provided by law for forfeiture of bail bonds or recognizances in the county courts; provided, that in case the sureties shall not be served with citation at least ten full days before the return date thereof, such order to show cause shall be heard and final judgment rendered at any time thereafter after the expiration of ten full days from the service of the citation. A scire facias docket shall be provided and kept for entering all proceedings had in forfeiting recognizances and bail bonds, in the same manner as provided by the general laws of the State for county courts. (Id. sec. 7.)

Art. 97¾*mm*. Costs.—There shall be taxed against and collected from each defendant convicted before said court, such costs as may be prescribed by the city commissioners of said city, but in no case shall greater costs be prescribed than is prescribed by law to be collected of defendants in county courts of this State. All costs and fines imposed shall be paid to the clerk of said court and by him paid daily into the city treasury of said city of Port Arthur for the use and benefit of said city, except where otherwise expressly provided by law; and said city shall bear and pay all the salaries of the judges, officers and employes of said court, and all the expenses and costs or organizing, operating and maintaining said court. (Id. sec. 8.)

Art. 97¾*n*. Appeals.—All trials in said court shall be final on the merits or facts, but from every conviction had in said court there shall be a right of appeal, whether such conviction be had under a prosecution for violation of an ordinance of said city or a law of the state, but such right of appeal shall be only to the Court of Criminal Appeals of

Texas; and all such appeals shall accordingly be returnable to the Court of Criminal Appeals of Texas, and not otherwise; and the jurisdictions of all courts affected by this Act is hereby conformed hereto. (Id. sec. 9.)

Art. 97¾nn. Costs and fines; collection; imprisonment.—Said court may enforce the collection of all fines and costs imposed and its judgments by imprisonment of the defendant in the city jail of said city of Port Arthur, or by working convicts in said court upon the streets, roads, highways, public grounds and works within the jurisdiction of said court; provided every convict shall receive a credit of one ($1) dollars for each day he may be confined or worked; and provided his term of sentence or service shall in no event be greater than one day for each ($1) dollars of fine and costs. Any person convicted in said court may have execution stayed in said cause by entering into a bond, to be approved by the chief of police, with two or more sureties, conditioned that such person will pay to the officers entitled to receive the same the amount of fine and costs in such case at the rate of five ($5) dollars per week. In case payment is not made in accordance with the terms of said bond, proceedings to enforce the collection of said bond may be had as provided for the collection of forfeited bail bonds. (Id. sec. 10.)

Art. 97¾o. County court of Jefferson County at Law No. 2 abolished; judge and city attorney; election.—After the due and legal organization of said criminal court of Port Arthur, Texas, the present county court of Jefferson County at Law No. 2, shall be abolished. The Act creating said county court of Jefferson County at Law No. 2 and all Acts and parts of Acts in conflict hereto are hereby repealed in so far as the same are in such conflict, that as soon as this Act becomes a law and goes into effect the commissioners of said city of Port Arthur shall call an election for the purpose of electing a judge and city attorney for said court, who will serve until the next biennial city election or until their successors are elected and qualified, at which time it will be necessary and regular for those aspiring for said above named offices to announce for said office in the same manner and form as prescribed by the charter of said city for the election of commissioners of said city, and thereafter shall hold their offices for the regular term of two years, or until their successor is elected and qualified. That any licensed practitioner who has a State license to practice law, shall be qualified to hold either office as city attorney or city judge. (Id. sec. 11.)

CHAPTER FOUR

OF COUNTY COURTS

Art. 98. (91) Have exclusive jurisdiction of misdemeanors, except, etc.—The county courts shall have exclusive original jurisdiction of all misdemeanors, except misdemeanors involving official misconduct, and except cases in which the highest penalty or fine that may be imposed under the law may not exceed two hundred dollars, and except in counties where there is established a criminal district court. (Const. art. 5, sec. 16; Acts 1876, p. 13, sec. 3.)

See Ex parte Fagg, 44 S. W. 294.

Art. 99. (92) Power to forfeit bail bonds.—County courts shall have jurisdiction in the forfeiture and final judgment of all bonds and recognizances taken in criminal cases, of which criminal cases said courts have jurisdiction. (Acts 1876, p. 18, sec. 3.)

Art. 100. (93) Power to issue writs of habeas corpus.—The county courts, or judges thereof, shall have the power to issue writs of habeas corpus in all cases in which the constitution has not conferred the power on the district courts or judges thereof; and, upon the return of such writ, may remand to custody, admit to bail or discharge the person imprisoned or detained, as the law and nature of the case may require. (Const. art. 5, sec. 16; Acts 1876, p. 19, sec. 5.)

Art. 101. (94) Appellate jurisdiction.—The county courts shall have appellate jurisdiction in criminal cases of which justices of the peace and other inferior tribunals have original jurisdiction. (Const. art. 5, sec. 16; Acts 1876, p. 18, sec. 3.)

Art. 101a. Creation of county court of Dallas county, at law.—There is hereby created a court to be held in Dallas county, to be called the "County Court of Dallas County, at Law." (Acts 1907, p. 115, sec. 1.)

Art. 102. County court of Dallas county at law, jurisdiction of defined.—The county court of Dallas county at law shall have jurisdiction in all matters and causes, civil and criminal, original and appellate, over which, by the general laws of the state, the county court of said county would have jurisdiction, except as provided in article 102; and all cases other than probate matters, and such as are provided in article 102, be, and the same are hereby, transferred to the county court of Dallas county at law; and all writs and process, civil and criminal, heretofore issued by or out of said county court, other than pertaining to matters over which, by article 102, jurisdiction remains in the county court of Dallas county, be and the same are hereby made returnable to the county court of Dallas county at law. The jurisdiction of the county court of Dallas county at law, and of the judge thereof, shall extend to all matters of eminent domain, of which jurisdiction has been heretofore vested in the county court or in the county judge; but this provision shall not affect the jurisdiction of the commissioners' court, or of the county judge of Dallas county as the presiding officer of such commissioners' court, as to roads, bridges and public highways, and matters of eminent domain which are now within the jurisdiction of the commissioners' court or the judge thereof. (Acts 1907, p. 115.)

Art. 103. Jurisdiction retained by the county court of Dallas county.—The county court of Dallas county shall retain, as heretofore, the general jurisdiction of a probate court; it shall probate wills, appoint guardians of minors, idiots, lunatics, person non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of executors, administrators and guardians, transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition and distribution of estates of deceased persons, and to apprentice minors as provided by law; and the said court, or

the judge thereof, shall have the power to issue writs of injunction, mandamus, and all writs necessary to the enforcement of the jurisdiction of said court; and also to punish contempts under such provisions as are or may be provided by general law governing county courts throughout the state; but said county court of Dallas county shall have no other jurisdiction, civil or criminal. The county judge of Dallas county shall be the judge of the county court of Dallas county. All ex officio duties of the county judge shall be exercised by the said judge of the county court of Dallas county, except in so far as the same shall, by this act, be committed to the judge of the county court of Dallas county at law. (Id. p. 115.)

Art. 103a. Terms of county court of Dallas county, at law; practice, etc.—The terms of the county court of Dallas county, at law, and the practice therein, and appeals and writs of error therefrom, shall be as prescribed by laws relating to county courts. The terms of the county court of Dallas county, at law, shall be held as now established for the terms of the county court of Dallas county, until the same may be changed in accordance with the law. (Acts 1907, p. 115, sec. 4.)

Art. 103b. Judge to be elected when, etc.; qualifications; term.—There shall be elected in said county, by the qualified voters thereof, at each general election, a judge of the county court of Dallas county, at law, who shall be well informed in the laws of the state, who shall hold his office for two years, and until his successor shall have duly qualified. (Id. sec. 5.)

Art. 103c. Bond and oath of judge.—The judge of the county court of Dallas county, at law, shall execute a bond and take the oath of office, as required by the law relating to county judges. (Id. sec. 6.)

Art. 103d. Special judge elected or appointed, how.—A special judge of the county court of Dallas county, at law, may be appointed or elected as provided by laws relating to county courts and to the judges thereof. (Id. sec. 7.)

Art. 104. Power of the county court of Dallas county at law, or the judge thereof.—The county court of Dallas county at law, or the judges thereof, shall have power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari and supersedeas, and all writs necessary to the enforcement of the jurisdiction of said court, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of said court, or of any other court or tribunal inferior to said court. (Id. p. 115.)

Art. 104a. Clerk of; seal; sheriff to attend when, etc.—The county clerk of Dallas county shall be the clerk of the county court of Dallas county, at law. The seal of the said court shall be the same as that provided by law for county courts, except that the seal shall contain the words, "County Court of Dallas County, at Law;" the sheriff of Dallas county shall, in person or by deputy, attend the said court when required by the judge thereof. (Id. sec. 9.)

Art. 104b. Appointment of jury commissioners; selection, etc., of juries.—The jurisdiction and authority now vested by law in the county court for the appointment of jury commissioners and the selection and service of jurors shall be exercised by the county court of Dallas county, at law. (Id. sec. 10.)

Art. 104c. Vacancy in office of judge, how filled.—Any vacancy in the office of the judge of the county court of Dallas county, at law, may be filled by the commissioners' court of Dallas county until the next general election. (Id. sec. 11.)

Art. 104d. Fees and salary of judge.—The judge of the county court of Dallas county, at law, shall collect the same fees as are now established by law relating to county judges, all of which shall be by him paid monthly into the county treasury; and he shall receive an annual salary of three thousand dollars per annum, payable monthly, to be paid out of the county treasury by the commissioners' court. (Id. sec. 12.)

Art. 104e. Salary of county judge of Dallas county.—The county judge of Dallas county shall hereafter receive from the county treasury, in addition to the fees allowed him by law, such a salary, for the ex officio duties of his office, as may be allowed him by the commissioners' court, not less than twelve hundred dollars per year. (Id. sec. 13.)

Art. 104f. County court of Bexar county for criminal cases created.—That there is hereby created a court to be held in Bexar County, Texas, to be called the "County Court of Bexar County for Criminal Cases." (Acts 1915, ch. 39, sec. 1.)

Art. 104g. Same; jurisdiction.—The County Court of Bexar County for Criminal Cases shall have exclusive jurisdiction of all criminal matters and causes, original and appellate, over which, by the General Laws of the State of Texas, the County Court of said county would have jurisdiction, and the same are hereby transferred to the County Court of Bexar County for Criminal Cases; and all criminal writs and processes heretofore issued by or out of said County Court, be, and the same are hereby made returnable to the County Court of Bexar County for Criminal Cases. (Id. sec. 2.)

Art. 104h. Same; jurisdiction retained by other courts.—The jurisdiction hereby transferred to the County Court of Bexar County for Criminal Cases shall include all criminal cases and matters, the forfeiture of bonds in criminal cases, all proceedings in relation thereto; but the County Court of Bexar County shall retain, as heretofore, the jurisdiction of all cases of eminent domain; the general jurisdiction of a probate court; it shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of administrators, executors and guardians; transact all business pertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition and distribution of estates of deceased persons, and to apprentice minors, as provided by law. The county judge of Bexar county shall be the judge of the County Court of Bexar County, and all ex-officio duties of the county judge shall be exercised by the said judge of the County Court of Bexar County, except in so far as the same shall, by this Act and by Act of the Thirty-

second Legislature, General Laws pages 15–17, House Bill No. 111, Chapter 10, be committed to the judge of the County Court of Bexar County for Civil Cases [Vernon's Sayles' Civ. St. 1914, Title 36, ch. 4]. The county judge of Bexar County shall retain authority to determine all matters relating to or arising out of or connected with the granting or revoking of liquor licenses, and all matters appertaining thereto, try all applications for liquor licenses and shall approve all liquor bonds as may be provided by law. He shall also retain jurisdiction of the Juvenile Court. (Id. sec. 3.)

Art. 104i. Same; power to issue writs.—The said County Court of Bexar County for Criminal Cases, and the judge thereof shall have the power to issue writs of injunction, certiorari, supersedeas, mandamus, and all other writs necessary to the enforcement of the jurisdiction of said court; and also power to punish for contempt under such provisions as are or may be provided by the General Laws governing County Courts throughout the State; and to issue writs of habeas corpus in cases within the jurisdiction of said court. (Id. sec. 4.)

Art. 104j. Same; terms.—The County Court of Bexar County for Criminal Cases shall hold at least four terms for criminal business annually as may be provided by the Commissioners Court of Bexar County under authority of law, and such other terms each year as may be fixed by the Commissioners Court of Bexar County; provided the Commissioners Court having fixed the terms of said court, shall not change the same until the expiration of one year. (Id. sec. 5.)

Art. 104k. Same; election of judge; qualifications and tenure.—There shall be elected in said county by the qualified voters thereof, at each general election, a judge of the County Court of Bexar County for Criminal Cases, who shall be learned in the laws of the State, who shall hold his office for two years, and until his successor shall have been duly qualified. (Id. sec. 6.)

Art. 104*l*. Same; judge's bond.—The judge of the County Court of Bexar County for Criminal Cases shall execute a bond in the sum of five thousand ($5,000.00) dollars and take the oath of office as required by the law relating to county judges. (Id. sec. 7.)

Art. 104m. Same; special judge.—Special judge of the County Court of Bexar County for Criminal Cases may be appointed or elected as provided by laws relating to County Courts, and to the judges thereof, and shall receive salary and compensations similar to the judge of the court hereby created, but which shall be prorated and paid to him only for the actual number of days he actually serves. (Id. sec. 8.)

Art. 104n. Same; clerk and sheriff.—The county clerk of Bexar County shall be the clerk of the County Court of Bexar County for Criminal Cases. The seal of said court shall be the same as that provided for County Courts, except that the seal shall contain the words "County Court of Bexar County for Criminal Cases." The sheriff of Bexar County shall in person or by deputy attend the court when required by the judge thereof. (Id. sec. 9.)

Art. 104*o*. Same; jurors.—The jurisdiction and authority now vested by law in the County Court of Bexar County, and the County Court of Bexar County for Civil Cases, for the selection and service of jurors shall be exercised by each of the three courts within their jurisdiction. (Id. sec. 10.)

Art. 104p. Same; vacancy in office of judge; appointment of first incumbent.—Any vacancy in the office of the judge of the court created by this Act may be filled by the Commissioners Court of Bexar County until the next general election. The Commissioners Court of the county shall, as soon as may be, after this Act shall take effect, appoint a judge of the County Court of Bexar County for Criminal Cases, who shall serve until the next general election, and until his successor shall be duly elected and qualified. (Id. sec. 11.)

Art. 104q. Same; removal of judge.—The judge of the County Court of Bexar County for Criminal Cases may be removed from office in the same manner and for the same causes as any other county judge may be removed under the laws of this State. (Id. sec. 13.)

Art. 104r. Same; purpose of act.—The provisions of this law are not intended to in any manner affect the jurisdiction of the County Court of Bexar County for Civil Cases, and this law is intended to create another court somewhat similar to said County Court of Bexar County for Civil Cases, but the court hereby created to have jurisdiction of criminal matters only. (Id. sec. 14.)

Art. 104s. County court at law of Harris county, Texas, created.—The County Court of Harris County for Civil Cases shall hereafter be known as the County Court at Law of Harris County, Texas, and the seal of said court shall hereafter be the same as that provided by law for county courts, except that the seal shall contain the words: "County Court at Law of Harris County, Texas." (Acts 1913, ch. 8, sec. 1.)

Art. 104ss. Same; effect of change of name of former court.—The change in the name of said court shall in no way or manner, other than is provided in this Act, affect the officers or judge of said court, their compensation or tenure of office, and shall, in no way or manner, affect the process of said court already issued. The judge and officers now serving said County Court of Harris County for Civil Cases, shall continue to serve said court under its changed name to the same effect to all things as if the name had not been changed. All process heretofore issued out of said County Court for Civil Cases and all returns thereon shall in all things be treated and considered as if the name of said court had not been changed. (Id. sec. 2.)

Art. 104sss. Same; jurisdiction.—The said court to be hereafter known as the County Court at Law for Harris County shall have all the jurisdiction heretofore conferred upon it under the name of the County Court of Harris County for Civil Cases, and its judge shall have all the powers heretofore conferred upon the judge of the County Court of Harris County for Civil Cases; and in addition to the said jurisdiction the said County Court at Law of Harris County shall have all of the, and the same jurisdiction over criminal matters that is now vested in the county courts having jurisdiction in civil

and criminal cases under the Constitution and laws of Texas, and all appeals from justices, mayors, recorders, or other inferior courts within Harris county, shall hereafter lie to said County Court at Law of Harris County instead of as heretofore, to the Criminal District Court of Harris County, and the judge of said court shall have, in addition to the powers now conferred upon him, the same powers, rights and privileges, as to criminal matters as are now vested in and enjoyed by the judges of county courts having criminal jurisdiction; provided, however, that said court shall have no jurisdiction over any of those matters the jurisdiction over which is now in the county court of Harris county or the judge thereof. (Id. sec. 3.)

Art. 104ssss. Same; clerk; fees.—The county clerk of Harris county shall have no authority in criminal matters pending in said County Court at Law for Harris County. The clerk of the Criminal District Court of Harris County shall act as the clerk of the said County Court of Law for Harris County in all criminal matters, but only in criminal matters, and he shall sign all papers emanating from said court, including the minutes of said court in criminal matters, whenever its clerk's signature is necessary, as ex officio clerk of said County Court at Law for Harris County, using the seal of said court. The fees of said clerk as to those criminal matters, the jurisdiction over which is hereby vested in said County Court at Law, shall be the same in all respects, including amount, manner of payment and collection, as if the Criminal District Court of Harris County had retained jurisdiction over said matters. (Id. sec. 4.)

Art. 104t. Same; transfer of misdemeanor cases.—All misdemeanor criminal cases now pending in the Criminal District Court of Harris County, as well as all criminal cases on appeal to the said district court from the various subordinate courts of Harris county shall, immediately upon the taking effect of this Act, be transferred to the County Court at Law of Harris County, and the same are hereby so transferred, and upon said County Court at Law is hereby conferred jurisdiction of such cases. (Id. sec. 5.)

Art. 104tt. Same; fees of judge.—In addition to the compensation now provided by law, the judge of said County Court at Law of Harris County, shall tax up, receive and collect in each case, the same fees and costs in criminal cases over which said county court has jurisdiction, as are now provided by the General Laws of the State, for judges of county courts having criminal jurisdiction, such fees to be retained by him as compensation for the additional jurisdiction conferred upon his court. (Id. sec. 6.)

Art. 104ttt. Same; terms.—Said court shall hold six terms a year, beginning respectively on the first Monday in January, in March, in May, in July, in September, and in November of each year, and each term shall continue until the business is disposed of. (Id. sec. 7.)

Art. 104u. County court at law No. 2 of Harris County.—There is hereby created a court to be held in Harris County, Texas, to be called the "County Court at Law No. 2 of Harris County, Texas." (Acts 1915, 1st C. S., ch. 8, sec. 1.)

Art. 104uu. Same; jurisdiction.—Said County Court at Law No. 2 of Harris County, Texas, shall have, and it is hereby granted original and appellate jurisdiction, in all matters and causes of a civil and criminal nature, concurrent with and in all things equal to that heretofore conferred upon the County Court at Law of Harris County, Texas. (Id. sec. 2.)

Art. 104uuu. Same; judge; concurrent jurisdiction with county court at law; proviso.—The judge of said County Court at Law No. 2 of Harris County, Texas, shall have and exercise all the powers and shall be subject to all the limitations and obligations heretofore or hereafter conferred or imposed upon the judge of the County Court at Law of Harris County, Texas. Said County Court at Law No. 2 of Harris County, Texas, shall have concurrent jurisdiction with the County Court at Law of Harris County over criminal matters, and shall have the same jurisdiction over criminal matters, that is now vested in county courts having jurisdiction in civil and criminal cases under the Constitution and laws of Texas. And said County Court at Law No. 2 of Harris County shall have concurrent jurisdiction with the County Court at Law of Harris County in all appeals from justices, mayors, recorders or other inferior courts within Harris County; and the judge of said court shall have the same powers, rights and privileges as to criminal matters as are now vested in and enjoyed by the judges of county courts having criminal jurisdiction; provided, however, that said court shall have no jurisdiction over any of those matters the jurisdiction over which is now vested in the County Court of Harris County, or the judge thereof. (Id. sec. 3.)

Art. 104uuuu. Same; qualifications of judge; compensation; fees.—The judge of the County Court at Law No. 2 of Harris County, Texas, shall be well informed in the law; he shall have been a duly licensed and practicing member of the bar of this State for not less than two years; he shall be appointed by the Governor of the State of Texas as soon as may be after this Act takes effect; he shall take the oath of office and execute an official bond as now required by the law relating to county judges, and he shall collect the same fees in civil cases as are now provided by law in case of county judges, all of which he shall pay monthly into the county treasury, and in lieu of such fees he shall receive a salary of three thousand dollars per annum to be paid out of the county treasury by the Commissioners Court of Harris County in monthly installments of two hundred and fifty dollars each. In addition to the compensation hereinbefore provided the judge of the County Court at Law No. 2 of Harris County shall tax up, receive and collect in each criminal case the same fees and costs as are now provided by the General Laws of the State for the judges of county courts having criminal jurisdiction, such fees to be retained by him as compensation for the exercise of the criminal jurisdiction herein conferred upon his court. (Id. sec. 4.)

Art. 104v. Same; clerk; fees.—The county clerk of Harris County shall be the

clerk of said County Court at Law No. 2 of Harris County in civil matters and causes; and shall receive and collect the same fees which he now receives and collects as clerk of the County Court at Law of Harris County, Texas. The clerk of the Criminal District Court of Harris County, Texas, shall be clerk of said County Court at Law No. 2 in all criminal matters and causes, and shall receive and collect such fees as he now receives and collects in criminal matters as clerk of the County Court at Law of Harris County. (Id. sec. 5.)

Art. 104vv. Same; seal.—The seal of the County Court at Law No. 2 of Harris County, Texas, shall be the same as that provided by law for county courts, except that such seal shall contain the words "County Court at Law Number Two of Harris County, Texas," and said seal shall be judicially noticed. (Id. sec. 6.)

Art. 104vvv. Same; sheriff; fees.—The sheriff of Harris County, either in person or by deputy, shall attend said court when required by the judge thereof; and the various sheriffs and constables of this State executing process issued out of said court shall receive the fees now or hereafter fixed by law for executing process issued out of county courts. (Id. sec. 7.)

Art. 104vvvv. Same; special judge.—A special judge of said court may be appointed or elected in the manner and instances now or hereafter provided by the law relating to county courts and the judges thereof. (Id. sec. 8.)

Art. 104w. Same; power to issue writs.—Said court shall have power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, habeas corpus in criminal misdemeanor cases, and all writs necessary to the enforcement of its jurisdiction; and, within the limitations placed upon county courts, to punish contempts thereof. Writs of injunction granted in civil cases by the judge of said County Court at Law No. 2 and by the judge of said County Court at Law shall be made returnable to the court in which the petition for injunction shall be filed, as hereinafter provided. (Id. sec. 9.)

Art. 104ww. Same; jurisdiction of county court at law not impaired.—The jurisdiction, civil and criminal, of the County Court at Law of Harris County, Texas, shall not in anywise be impaired or affected by this Act. (Id. sec. 10.)

Art. 104www. Same; terms of court.—The terms of the court hereby created shall begin on the first Monday of the months of June, August, October, December, February and April of each year. The sessions of said court shall be held in such place as may be provided therefor by the Commissioners Court of Harris County. (Id. sec. 11.)

Art. 104x. Same; transfer of pending causes.—As soon as may be, after this Act takes effect, the clerk of the County Court of Law of Harris County, Texas, shall transfer to the docket of the County Court at Law No. 2 of Harris County, Texas, one-half of the civil cases then pending in said County Court at Law. In making such transfer, said Clerk shall first transfer to said County Court at Law No. 2 the case having the smallest file number on the docket of said County Court at Law. The case having the next highest file number shall remain on the docket of said County Court at Law. The case having the third smallest file number shall be transferred. In like manner said clerk shall go through the docket of said County Court at Law, transferring to the docket of said County Court at Law No. 2 every second civil case thereafter. The clerk shall note such transfer, when made, on the minutes of the County Court at Law of Harris County, Texas. New civil and new criminal cases filed with said clerk after such transfer has been made, irrespective of the court or judge to which the petitions in such civil cases shall be addressed, shall, in like manner, be filed by the said clerk, one civil and one criminal case in said County Court at Law No. 2, and one civil and one criminal case in said County Court at Law. The first new civil case and the first new criminal case, filed with said clerk after such transfer has been made, shall both be filed in said County Court at Law No. 2. (Id. sec. 12.)

Art. 104xx. Same; transfer of causes.—The judges of said County Court at Law and of said County Court at Law No. 2, in their discretion, either in term time or in vacation, by an order entered upon the minutes of their respective courts, may transfer to the court of the other any case or cases then pending in their respective courts. And when such case or case shall be so transferred the court to which such transfer shall be made shall have the same right and authority to try and finally dispose of the same as the court making such transfer. (Id. sec. 13.)

Art. 104xxx. Same; procedure.—The practice in said County Court at Law No. 2, and in cases of appeal and writs of error therefrom and thereto, shall be the same as is now, or may hereafter be prescribed for county courts. (Id. sec. 14.)

Art. 104y. Same; return of process in transferred causes.—All process issued out of the County Court at Law of Harris County, Texas, prior to the time when the clerk thereof shall transfer cases from the docket of said courts, as provided in Section 12 of this Act [Art. 104x], in cases transferred as therein provided, shall be returned to and filed in the court hereby created, and shall be equally as valid and binding upon parties to such transferred cases as though such process had been issued out of the County Court at Law No. 2 of Harris County, Texas. Likewise, in cases transferred by the judges of either of said courts, as provided in Section 13 of this Act [Art. 104xx], all process extant at the time of such transfer shall be returned to and filed in the court to which such transfer is made, and shall be as valid and binding as though originally issued out of the court to which such transfer may be made. (Id. sec. 15.)

Art. 104yy. Same; appointment of judge in first instance; election.—As soon as this Act shall take effect the Governor of the State shall appoint a judge of the County Court at Law No. 2 of Harris County, who shall serve until the next general election and until his successor shall be duly elected

and qualified. And any vacancy thereafter occurring in the office of the judge of the County Court at Law No. 2 of Harris County, created by this Act, shall be filled by the Commissioners Court of Harris County, the appointee thereof to hold office until the next succeeding general election, and until his successor shall have qualified. There shall be elected by the qualified voters of Harris County at each general election hereafter, a judge of the County Court at Law No. 2 of Harris County, who shall hold his office for two years, and until his successor shall be duly qualified. (Id. sec. 16.)

Art. 104yyy. County court of Jefferson county at law created.—There is hereby created a court to be held in Beaumont, Jefferson County, Texas, to be called the County Court of Jefferson County at Law. (Acts 1915, ch. 29, sec. 1.)

See ante, Civ. St., arts. 1811—119 to 1811—132.

Art. 104z. Same; jurisdiction.—The County Court of Jefferson County at Law shall have jurisdiction in all matters and cases, civil and criminal, original and appellate, over which by the general laws of the State the County Court of said county would have jurisdiction, except as hereinafter provided in Section 3 of this Act [art. 104zz], and all cases pending in the County Court of said county other than probate matters such as are provided in Section 3 of this Act, shall be and the same are hereby transferred to the County Court of Jefferson County at Law, and all writs and process, civil and criminal, heretofore issued by or out of said County Court, other than those pertaining to matters which are hereby exempt from this bill that are to remain in the County Court of Jefferson County, shall be and the same are hereby made returnable to the County Court of Jefferson County at Law. The jurisdiction of the County Court of Jefferson County at Law, and to the Judge thereof, shall extend to all matters of eminent domain of which jurisdiction as heretofore vested in the County Court or in the County Judge; but this provision shall not affect the jurisdiction of the Commissioners Court or the County Judge of Jefferson County as the presiding officer of said Commissioners Court as to roads, bridges and public highways, or matters of eminent domain which are now in the jurisdiction of the Commissioners Court or the Judge thereof. (Id. sec. 2.)

Art. 104zz. Same; jurisdiction of other courts.—The County Court of Jefferson County shall retain, as heretofore, the general jurisdiction of the Probate Court and all jurisdiction conferred by law now over probate matters; and the court herein created shall have no other jurisdiction than that named in this bill, and the County Court of Jefferson County as now and heretofore existing shall have all jurisdiction which it now has, save and except that which is given the County Court of Jefferson County at Law in this bill, but the County Court as now existing shall have no other jurisdiction, civil or criminal. The County Judge of Jefferson County shall be the Judge of the County Court of said county, and all ex-officio duties of the County Judge shall be exercised by said Judge of the County Court of Jefferson County, except in so far as the same shall by this bill be committed to the County Court of Jefferson County at Law. (Id. sec. 3.)

Art. 104zzz. Same; clerk; seal; sheriff and deputy.—The County Clerk of Jefferson County, Texas, shall be the clerk of the County Court of Jefferson County at Law, and the seal of said court shall be the same as that provided by law for County Courts, except the seal shall contain the words "County Court of Jefferson County at Law," and the Sheriff of Jefferson County shall in person or by deputy attend said court when required by the Judge thereof, and the County Clerk of Jefferson County, Texas, is hereby authorized, if it becomes necessary, in his judgment, to appoint a deputy to specially attend to the matters pertaining to the County Court of Jefferson County at Law, and said deputy shall be allowed a salary of one hundred dollars per month. (Id. sec. 10.)

Art. 104¼. County court at law of Galveston, Texas, created.—There is hereby created a court to be held in Galveston county, to be called the "County Court of Galveston County at Law." (Loc. & Sp. Acts 1911, ch. 104, sec. 1.)

Art. 104¼a. Same; jurisdiction; causes transferred to.—The county court of Galveston county at law shall only have jurisdiction in criminal matters and causes, original and appellate, over which, by the general laws of the State, the county courts of this State would have jurisdiction; and all misdemeanor cases be and the same are hereby transferred to the county court of Galveston county at law, and all criminal writs and process in misdemeanor cases heretofore issued by or out of the criminal district court of said county be and the same are hereby made returnable to the county court of Galveston county at law. (Id. sec. 2.)

Art. 104¼b. Same; other jurisdiction not affected.—This Act shall not affect the jurisdiction of the county court of Galveston county, which shall be exclusive in probate, civil or other matters, except as stated, nor shall it affect the jurisdiction of the commissioners court or of the county judge of Galveston county as the presiding officer of such court. All ex officio duties of the county judge shall be exercised by the said judge of the county court of Galveston county, except in so far as the same shall, by this Act, be committed to the judge of the county court of Galveston county at law. (Id. sec. 3.)

Art. 104¼c. Same; terms of court; practice; appeals and writs of error.—The terms of the county court of Galveston county at law, and the practice therein and appeals and writs of error therefrom, shall be as prescribed by laws relating to county courts. The terms of the county court of Galveston county at law shall be held as now established for the terms of the county court of Galveston county until the same terms may be changed by the Commissioners Court. (Id. sec. 4.)

Art. 104¼d. Same; judge; election; term of office.—There shall be elected in said county by the qualified voters thereof, at each general election, a judge of the coun-

ty court of Galveston county at law, who shall be well informed in the laws of the State, who shall hold his office for two years, and until his successor shall have duly qualified. (Id. sec. 5.)

Art. 1041/4e. Same; judge; bond; oath of office.—The judge of the county court of Galveston county at law shall execute a bond and take the oath of office as required by law relating to county judges. (Id. sec. 6.)

Art. 1041/4f. Same; special judge.—A special judge of the county court of Galveston county at law may be appointed or elected, as provided by laws relating to county courts and to judges thereof. (Id. sec. 7.)

Art. 1041/4g. Same; writs; power to issue.—The county court of Galveston county at law, or the judges thereof, shall have power to issue all writs necessary to the enforcement of the jurisdiction of said court, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of said court or of any other court or tribunal inferior to said court. (Id. sec. 8.)

Art. 1041/4h. Same; clerk; deputy; salary; fees; seal of court; sheriff or constable to attend; prosecuting officer.—The county clerk of Galveston county shall be the clerk of the county court of Galveston county at law. The county clerk shall have authority to appoint a suitable person special deputy for said court to be paid a salary by the county of Galveston, not to exceed the sum of one hundred ($100.00) dollars per month; and said county clerk shall be entitled to the same fees for criminal cases in said court as is now or hereafter fixed by law for criminal cases in county courts of this State. He shall be allowed by the county to be paid out of the general fund the sum of six hundred ($600.00) dollars as ex officio fees for said court. The seal of the said court shall be the same as that provided by law for county courts, except that the seal shall contain the words, "County Court of Galveston County, at Law." The sheriff of Galveston county, or the constable for the justices precinct in which is located the county site of said county, shall, in person or by deputy, attend the said court when required by the judge thereof; and shall receive the same fees allowed by law for attending the county court. The county attorney of Galveston county shall be prosecuting officer of said court, and shall receive the same fees as are established by law relating to county and district attorneys. (Id. sec. 9.)

Art. 1041/4i. Same; juries.—The jurisdiction and authority now vested by law in the county court for the appointment of jury commissioners and the selection and service of jurors shall be exercised by the county court of Galveston county at law. (Id. sec. 10.)

Art. 1041/4j. Same; judge; vacancy in office of.—Any vacancy in the office of the judge of the court created by this Act may be filled by the commissioners court of Galveston county until the next general election. The commissioners court shall, as soon as may be, after this Act shall take effect, appoint a judge of the county court of Galveston county at law, who shall serve until the next general election and until his successor shall be duly elected and qualified. (Id. sec. 11.)

Art. 1041/4k. Same; judge; fees, salary.—The judge of the county court of Galveston county at law shall collect the same fees as are now established by law relating to county judges in misdemeanor cases, all of which shall be by him paid monthly into the county treasury, and he shall receive an annual salary of twenty-one hundred ($2100.00) dollars per annum, payable monthly, to be paid out of the county treasury by the commissioners court. (Id. sec. 12.)

Art. 105. (95) Appeal, etc., to district court, when.—In all counties in which the civil and criminal jurisdiction, or either, of county courts has been transferred to the district courts, appeals and writs of certiorari may be 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. (Acts 1879, p. 125.)

See post, arts. 893 et seq.; ante, Civ. St., art. 2392.

SPECIAL ACTS AFFECTING THE CRIMINAL JURISDICTION OF THE REGULAR COUNTY COURTS EXISTING UNDER THE CONSTITUTION

See appendix, subd. I, at end of Civil Statutes.

CHAPTER FIVE

OF JUSTICES' AND OTHER INFERIOR COURTS

Art. 106. (96) Original concurrent jurisdiction.—Justices of the peace shall have and exercise original concurrent jurisdiction with other courts in all cases arising under the criminal laws of this state in which the punishment is by fine only, and where the maximum of such fine may not exceed two hundred dollars, except in cases involving official misconduct. (Const. art. 5, sec. 19; Acts 1876, p. 155, sec. 3.)

Ex parte Brown, 64 S. W. 249; Jarvis v. Taylor County, 163 S. W. 334.

Art. 107. (97) Power to forfeit bail bonds.—They shall also have the power to take forfeitures of all bail bonds given for the appearance of any parties at their courts, regardless of the amount, where the conditions of said bonds have not been complied with. (Acts 1876, p. 155, sec. 3.)

Art. 108. (98) Mayors' and other inferior courts.—Mayors and recorders of incorporated cities or towns shall have and exercise the same jurisdiction as justices of the peace within the limits of their respective corporations, and the provisions of this Code governing justices' courts shall apply to mayors' and recorders' courts. (O. C. 65.)

See post, title 11; Harris Co. v. Stewart, 41 S. W. 650; May v. Finley, 43 S. W. 257.

Art. 109. (99) May sit at any time to try causes.—Justices of the peace, mayors and recorders may sit at any time to try criminal causes over which they have jurisdiction. (O. C. 65.)

Art. 109a. Corporation court created.—There is hereby created and established in each of the cities, towns and villages of this state, now or hereafter incorporated, whether by general or special act, a court to be known as the corporation court in such city, town or village, which court shall have jurisdic-

tion and organization hereinafter prescribed. (Acts of 1899, p. 40, sec. 1.)

In Blessing v. City of Galveston (1875) 42 Tex. 641, it was held that under the constitution, the legislature had power to create municipal judicial tribunals to enforce the police powers delegated to the municipal body. In 1877, the Supreme Court, in Ex parte Towles, 48 Tex. 413, held that the jurisdiction of the various courts named in the constitution was fixed by that document, and the legislature had no power to alter that jurisdiction by the creation of a special tribunal, the powers conferred on which would intrench on the constitutional authority of one of the regularly created courts. The Towles decision was followed in 1884 by the decision in Gibson v. Templeton, 62 Tex. 555. In Ex parte Ginnochio (1891) 18 S. W. 82, the Court of Appeals held that a special statute creating a court with exclusive jurisdiction over violations of the Sunday Laws in the City of Ft. Worth was unconstitutional in so far as it excluded the jurisdiction of justices of the peace over the same subject. In Leach v. State (1896) 36 S. W. 471, the Court of Criminal Appeals held that the legislature is without power to create a municipal court with jurisdiction concurrent with the constitutional state courts over violations of state laws. The decision in the Leach case, supra, was overruled by the Supreme Court in Harris County v. Stewart (1897) 41 S. W. 650, and it was held that, under the power conferred by Const. art. 5, sec. 1, to "establish such other courts as it (the legislature) may deem necessary" and to "prescribe the jurisdiction and organization thereof," the legislature was authorized to confer on a city recorder's court jurisdiction to try offenses against the general penal laws of the state. In the following year (1898) the Court of Criminal Appeals in Ex parte Coombs, 44 S. W. 854, adhered to its decision in the Leach case, supra, and held that the legislature was without constitutional authority to create a corporation court with jurisdiction exclusive of or concurrent with the regular state courts to try violations of the penal laws. But in 1900 the Court of Criminal Appeals overruled its decisions in the Leach and Coombs Cases, and in Ex parte Wilbarger, 55 S. W. 968, held that the act of the 26th Legislature creating the Corporation Court, was not violative of Const. art. 5, sec. 1, in that it infringed the jurisdiction of the state courts, or of Const. art. 5, sec. 18, limiting the number of justices in each county, and that such act was not invalid, as conferring both state and municipal jurisdiction on the same court. In Ex parte Hart, 56 S. W. 341; Ex parte Freedman, 83 S. W. 1125; Ex parte Abrams, 120 S. W. 883, 18 Ann. Cas. 45; Ex parte Hubbard, 63 App. 516, 140 S. W. 451, the Court of Criminal Appeals followed its decision in the Wilbarger case, and in State v. Travis County Court, 174 S. W. 365, it held that articles 963, 964 and 965 of the Code of Criminal Procedure of 1911, were valid enactments. There seems no good reason why the Corporation Court Act should not be incorporated into the Criminal statutes, the jurisdiction of the court being entirely criminal, and the act creating it being a qualification of, or co-ordinate provision with, articles 108, 963-965, Code Cr. Proc. In view of the situation the act is inserted in this compilation as arts. 109a-109g, 920a, 968b-968j, 1177a.

Art. 109b. Jurisdiction.—Said court shall have jurisdiction within the territorial limits of said city, town or village, within which it is established, in all criminal cases arising under the ordinances of the said city, town or village, now in force, or hereafter to be passed, and shall also have jurisdiction concurrently with any justice of the peace in any precinct in which said city, town or village is situated, in all criminal cases arising under the criminal laws of this state, in which the punishment is by fine only, and where the maximum of such fine may not exceed two hundred dollars and arising within the territorial limits of such city, town or village. (Id. sec. 2.)

Art. 109c. Judge or recorder elected or appointed, how; term, mayor ex officio recorder, when.—Such court shall be presided over by a judge to be known as the recorder of such court, in such city, town or village, who, in cities, towns or villages incorporated under special charter or charters, shall be elected or appointed in the manner and under the respective provisions of the charter now in force concerning the election or appointment of the magistrate to preside over the municipal court in such city, town or village, and all such provisions are hereby made applicable to the recorder herein provided for; and in cities, towns and villages not incorporated under special charter, such recorder shall be elected by the qualified voters of such city, town or village, in the same manner as the mayor of such city, town or village, and whose term of office shall be the same as such mayor; provided, in such cities, towns and villages not incorporated and acting under special charter, the mayor of such city, town or village shall be ex officio recorder of such court, and shall act as such, unless the city council or board of aldermen of such city, town or village shall, by ordinance, authorize the election of a recorder. (Id. sec. 3.)

Art. 109d. Recorder elected or appointed, when and how; discretion in council; term of office, etc.; vacancy; council may make mayor ex officio recorder, when.—Every two years there shall be elected or appointed in each city, town or village within this state, now or hereafter incorporated, a recorder, who shall preside over the corporation court hereby created, and established, and who shall be elected or appointed as provided in article 905; provided, however, that whenever by the provisions of the charter under which such city, town or village is now incorporated, it is provided that the magistrate now presiding over the municipal court therein is to be elected by the people, then in such case the city council of any such city, town or village may order an election for the recorder, or, in its discretion, may appoint the recorder, who shall hold his office until the next general election for city officers; provided, further, that wherever in any such city, town or village, the office of the presiding magistrate of the municipal court therein shall not have expired when the recorder is elected or appointed therein, the said recorder, first elected or appointed, shall hold his term of office corresponding to the unexpired term of the said magistrate; and every two years thereafter such recorder shall be elected or appointed for a term of two years, and until his successor is elected and qualified. In case of vacancy in the office of recorder or clerk of the court in any city, town or village, such vacancy shall be filled by the council or board of aldermen for the unexpired term only; provided, further, that the board of aldermen may provide by ordinance for the mayor to act as ex officio recorder in all cities and towns not operating under special charter. (Id. sec. 4.)

Art. 109e. Clerk of corporation court elected by council, when; provided; terms; duties.—There shall be a clerk of said corporation court elected by the council or board of aldermen of each such city, town or village, at the same time at which the recorder is elected; but, in such city, town or village, it may be provided by ordinance that the city secretary shall be ex officio clerk of the said court, and may be authorized to appoint a deputy, who shall have the

same powers as the said secretary. The clerk of said court shall hold his office for two years, and until his successor is elected and qualified. In case of an ex officio clerk as aforesaid, he shall hold his office during his term as city secretary. It shall be the duty of said clerk to keep a minute of the proceedings of the said court; to issue all process, and generally to do and perform all of the duties of a clerk of a court as prescribed by law for the clerk of the county court, in so far as the said provisions may be applicable. (Id. sec. 5.)

Art. 109f. Seal of corporation court.—The said corporation court shall have a seal, having engraved thereon a star of five points in the center, and words, "Corporation Court in ———, Texas," the impress of which shall be attached to all proceedings, except subpœnas, issued out of said court, and shall be used to authenticate the official acts of the clerk and of the recorder, where he is authorized or required to use the seal of office. (Id. sec. 7.)

Art. 109g. Until organization of corporation courts municipal court as now established has jurisdiction, but thereafter abolished.—Until the due and legal organization of the said court in any city, town or village, as herein provided for, the municipal court in said city, town or village, as now established, shall continue to exercise its powers and jurisdiction. After the due and legal organization of the said corporation court, the said municipal court and the office of the judge and recorder and clerk thereof shall be abolished, and the said municipal court in each city, town or village shall be entirely superseded by the corporation court and such officers herein created and established, as the same shall be and become duly and legally organized. (Id. sec. 17.)

TITLE 3

OF THE PREVENTION AND SUPPRESSION OF OFFENSES, AND THE WRIT OF HABEAS CORPUS

CHAPTER ONE

OF PREVENTING OFFENSES BY THE ACT OF A PRIVATE PERSON

Art. 110. (100) May be prevented, how.—The commission of offenses may be prevented, either—

1. By lawful resistance; or,
2. By the intervention of the officers of the law.

Resistance to the offender may be made as hereinafter pointed out, either by the person about to be injured, or by the person in his behalf. (O. C. 66.)

Art. 111. (101) Rules as to prevention of by resistance.—Resistance by the party about to be injured may be used to prevent the commission of any offense which, in the Penal Code, is classed as an "offense against the person." (O. C. 67.)

Art. 112. (102) Same subject.—Resistance may also in like manner be made by the person about to be injured, to prevent any illegal attempt by force to take or injure property in his lawful possession. (O. C. 68.)

Art. 113. (103) Resistance may be in proportion to, etc.—The resistance which the person about to be injured may make to prevent the commission of the offense must be proportioned to the injury about to be inflicted. It must be only such as is necessary to repel the aggression. (O. C. 69.)

Art. 114. (104) Same subject.—If the person about to be injured, in respect either to his person or property, uses a greater amount of force to resist such injury than is necessary to repel the aggressor and protect his own person or property, he is himself guilty of an illegal act, according to the nature and degree of the force which he has used. (O. C. 70.)

Art. 115. (105) When other person, etc., may prevent.—Any person other than the party about to be injured may also, by the use of necessary means, prevent the commission of the offense. (O. C. 71.)

Art. 116. (106) Same rules shall govern in such case, as, etc.—The same rules which regulate the conduct of the person about to be injured, in repelling the aggression, are also applicable to the conduct of him who interferes in behalf of such person. He may use a degree of force proportioned to the injury about to be inflicted, and no greater. (O. C. 72.)

See Garcia v. S., 57 S. W. 650.

CHAPTER TWO

OF PREVENTING OFFENSES BY THE ACT OF MAGISTRATES AND OTHER OFFICERS

Art. 117. (107) Duty of magistrate to prevent.—It is the duty of every magistrate, when he may have heard, in any manner, that a threat has been made by one person to do some injury to the person or property of another, immediately to give notice to some peace officer, in order that such peace officer may use lawful means to prevent the injury. (O. C. 73.)

See Allen v. S., 66 S. W. 671.

Art. 118. (108) Same subject.—Whenever, in the presence or within the observation of a magistrate, an attempt is made by one person to inflict an injury upon the person or property of another, it is his duty to use all lawful means to prevent the injury. This may be done, either by verbal order to a peace officer to interfere and prevent the injury, or by the issuance of an order of arrest against the offender, or by arresting the offender; for which purpose he may call upon all persons present to assist in making the arrest. (O. C. 74.)

See Jones v. S., 65 S. W. 92.

Art. 119. (109) Same subject.—If, within the hearing of a magistrate, one person shall threaten to take the life of another, he shall issue a warrant for the arrest of the person making the threat, or, in case of emergency, he may himself immediately arrest such person. (O. C. 75.)

See post arts. 260, 261, 267.

Art. 120. (110) May compel offender to give security.—When the person making such threat is brought before a magistrate, he may compel him to give security to keep the peace, or commit him to custody in the manner hereinafter provided. (O. C. 76.)

See Jones v. S., 5 S. W. 92.

Art. 121. (111) Duty of peace officer to prevent.—It is the duty of every peace officer, when he may have been informed in

any manner that a threat has been made by one person to do some injury to the person or property of another, to prevent the threatened injury, if within his power; and, in order to do this, he may call in aid any number of citizens in his county. He may take such measures as the person about to be injured might for the prevention of the offense. (O. C. 77.)

See ante art. 42; Allen v. S., 66 S. W. 671.

Art. 122. (112) Same subject.—Whenever, in the presence of a peace officer, or within his view, one person is about to commit an offense against the person or property of another, it is his duty to prevent it; and, for this purpose, he may summon any number of the citizens of his county to his aid. He must use the amount of force necessary to prevent the commission of the offense, and no greater. (O. C. 92.)

See ante art. 43; post art. 136.

Art. 123. (113) Conduct of, etc., how regulated.—The conduct of peace officers, in preventing offenses about to be committed in their presence, or within their view, is to be regulated by the same rules as are prescribed to the action of the person about to be injured. They may use all force necessary to repel the aggression. (O. C. 79.)

See P. C. art. 1092.

CHAPTER THREE

PROCEEDINGS BEFORE MAGISTRATES FOR THE PURPOSE OF PREVENTING OFFENSES

Art. 124. (114) Magistrate shall issue warrant to prevent, when.—Whenever a magistrate is informed upon oath that an offense is about to be committed against the person or property of the informant, or of another, or that any person has threatened to commit an offense, it is his duty immediately to issue a warrant for the arrest of the accused, that he may be brought before such magistrate, or before some other named in the warrant. (O. C. 80.)

See Muckenfuss, Ex parte, 107 S. W. 1131.

Art. 125. (115) Proceedings when accused is brought before a magistrate.—When the person accused has been brought before the magistrate, he shall hear proof as to the accusation, and, if he be satisfied that there is just reason to apprehend that the offense was intended to be committed, or that the threat was seriously made, he shall make an order that the accused enter into bond in such sum as he may in his discretion require, conditioned that he will not commit such offense, and that he will keep the peace toward the person threatened or about to be injured, and toward all others for one year from the date of such bond. (O. C. 81.)

Art. 126. (116) What shall be a sufficient peace bond.—The bond provided for in the preceding article shall be sufficient if it be payable to the state of Texas, recite plainly the nature of the accusation against the defendant, be for some certain sum, and be signed by the defendant and his surety, and dated. No error of form shall vitiate such bond, and no error in the proceedings prior to the execution of the bond shall be available as a defense in an action thereupon. (O. C. 84.)

Art. 127. (117) Oath required of surety, and bond to be filed.—The officer taking such bond shall require the sureties of the defendant to make oath as to the value of their property in the manner pointed out with regard to recognizances and bail bonds; and such officer shall forthwith deposit such bond and oaths in the office of the clerk of the county court of the county where such bond is taken, to be filed and safely kept by said clerk in his office. (O. C. 90.)

See post art. 327.

Art. 128. (118) Amount of bail, how fixed.—Magistrates, in fixing the amount of such bonds, shall be governed by the pecuniary circumstances of the accused and the nature of the offense threatened or about to be committed. (O. C. 90.)

See post art. 329.

Art. 129. (119) How surety may exonerate himself.—A surety upon any such bond may, at any time before a breach thereof, exonerate himself from the obligations of the same by delivering to any magistrate of the county where such bond was taken the person of the defendant; and such magistrate shall in that case again require of the defendant bond, with other security in the same amount as the first bond; and the same proceeding shall be had as in the first instance, but the one year's time shall commence to run from the date of the first order. (O. C. 89.)

Art. 130. (120) Defendant failing or refusing to give bond shall be committed.—If the defendant fail or refuse to give bond, he shall be committed to the jail of the county, or if there be no jail, to the custody of the sheriff, for the period of one year from the date of the first order requiring such bond. (O. C. 82.)

Art. 131. (121) Defendant shall be discharged, when.—If the defendant has been committed for failing or refusing to give bond, he shall be discharged by the officer having him in custody, upon giving the required bond, or at the expiration of the time for which he has been committed. (O. C. 86.)

Art. 132. (122) May discharge defendant, when.—If the magistrate be of opinion from the evidence that there is no good reason to apprehend that the offense was intended or will be committed, or that no serious threat was made by the defendant, he shall discharge the person so accused, and may, in his discretion, tax the cost of the proceeding against the party making the complaint. (O. C. 85.)

Art. 133. (123) May require bond of person charged with libel.—If any person shall make oath, and shall convince the magistrate that he has good reason to believe that another is about to publish, sell or circulate, or is continuing to sell, publish or circulate any libel against him, or any such publication as is made an offense by the penal law of the state, the person accused of such intended publication may be required to enter into bond with security not to sell, publish or circulate such libelous publication, and the same proceedings be had as in the cases before enumerated in this chapter. (O. C. 95.)

See post art. 159; P. C. art. 1151.

Art. 134. (124) When defendant has committed a crime.—When, from the evidence before the magistrate, it appears that

the defendant has committed an offense against the penal law, the same proceedings shall be had as in other cases where parties are charged with crime. (O. C. 91.)

Art. 135. (125) Accused shall pay costs, when.—In cases where accused parties are found subject to the charge, and required to give bond, the costs of the proceeding shall be adjudged against them. (O. C. 95.)

See Landa v. S., 45 S. W. 713.

Art. 136. (126) May direct that person or property threatened shall be protected.—When, from the nature of the case and the proof offered to the magistrate, it may appear necessary and proper, he shall have a right to order any peace officer to protect the person or property of any individual threatened; and such peace officer shall have the right to summon aid by requiring any number of citizens of his county to assist in giving the protection. (O. C. 92.)

Art. 137. (127) Suit on bond.—If the condition of a bond, such as is provided for in this chapter, be forfeited, it shall be sued upon in the name of "The State of Texas," in the court having jurisdiction of the amount thereof, and in the county where such bond was taken. The suit shall be instituted and prosecuted by the district or county attorney, and the full amount of such bond may be recovered against the principal and sureties. (O. C. 87.)

Art. 138. (128) Same subject.—Suits upon such bonds shall be commenced within two years from the breach of the same, and not thereafter, and shall be governed by the rules applicable to civil actions, except that the sureties may be sued without joining the principal. It shall only be necessary in order to entitle the state to recover to prove that the defendant did commit the offense which he bound himself not to commit or failed to keep the peace according to his undertaking. (O. C. 88.)

CHAPTER FOUR

OF THE SUPPRESSION OF RIOTS, UNLAWFUL ASSEMBLIES AND OTHER DISTURBANCES

Art. 139. (129) Officer may require aid of citizens and military when he apprehends resistance.—When any officer authorized to execute process is resisted, or when he has sufficient reason to believe that he will meet with resistance in executing the same, he may command as many of the citizens of his county as he may think proper; and the sheriff may call any military company in the county to aid him in overcoming the resistance, and, if necessary, in seizing and arresting the persons engaged in such resistance, so that they may be brought to trial. (O. C. 95.)

See ante arts. 44, 45.

Art. 140. (130) Governor may order military to aid in executing process.—If it be represented to the governor in such manner as to satisfy him that the power of the county is not sufficient to enable the sheriff to execute process, he may, on application, order any military company of volunteers or militia company from another county to aid in overcoming such resistance. (O. C. 98.)

It would seem that this article, and the following article, at the time they were carried into the revised Code of Criminal Procedure, had been superseded by the militia act of 1905 (Civ. St. arts. 5776, 5831-5835, 5860).

Art. 141. (131) Conduct of military in suppressing riots.—Whenever, for the purpose of suppressing riots or unlawful assemblies, the aid of military or militia companies is called, they shall obey the orders of the civil officer who is engaged in suppressing the same. (O. C. 104.)

Art. 142. (132) Duty of magistrates and peace officers to suppress, etc.—Whenever a number of persons are assembled together in such a manner as to constitute a riot, according to the penal law of the state, it is the duty of every magistrate or peace officer to cause such persons to disperse. This may either be done by commanding them to disperse or by arresting the persons engaged, if necessary, either with or without warrant. (O. C. 99.)

See P. C. 265, 435, 451; Jones v. S., 65 S. W. 92.

Art. 143. (133) Officer may call to his aid the power of the county.—In order to enable the officer to disperse a riot, he may call to his aid the power of the county in the same manner as is provided where it is necessary for the execution of process. (O. C. 100.)

Art. 144. (134) What means may be adopted to suppress.—The officer engaged in suppressing a riot, and those who aid him, are authorized and justified in adopting such measures as are necessary to suppress the riot, but are not authorized to use any greater degree of force than is requisite to accomplish that object. (O. C. 102.)

See ante art. 123.

Art. 145. (135) Unlawful assembly.—All the articles of this chapter relating to the suppression of riots apply equally to an unlawful assembly and other unlawful disturbances, as defined by the Penal Code. (O. C. 103.)

Art. 146. (136) Suppression of riot, unlawful assembly, etc., at election.—For the purpose of suppressing riots, unlawful assemblies and other disturbances at elections, any magistrate may appoint a sufficient number of special constables. Such appointments shall be made to each special constable, shall be in writing, dated and signed by the magistrate, and shall recite the purposes for which such appointment is made, and the length of time it is to continue; and, before the same is delivered to such special constable, he shall take an oath before the magistrate to suppress, by lawful means, all riots, unlawful assemblies and breaches of the peace of which he may receive information, and to act impartially between all parties and persons interested in the result of the election. (O. C. 106.)

See Gonzales v. S., 110 S. W. 740.

Art. 147. (137) Power of special constable in such cases.—Special constables so appointed shall, during the time for which they are appointed, exercise the powers and perform the duties properly belonging to peace officers. (O. C. 117.)

See Ex parte Graham, 64 S. W. 932; Gonzales v. S., 110 S. W. 740.

CHAPTER FIVE

OF SUPPRESSION OF OFFENSES INJURIOUS TO PUBLIC HEALTH

Art. 148. (138) Court may restrain a person from carrying on a trade, etc.—After an indictment or information has been presented against any person for carrying on a trade, business or occupation injurious to the health of those in the neighborhood, the court shall have power, on the application of any one interested, and after hearing proof both for and against the accused, to restrain the defendant, in such penalty as may be deemed proper, from carrying on such trade, business or occupation, or may make such order respecting the manner and place of carrying on the same as may be deemed advisable; and, if, upon trial, the defendant be convicted, the restraint shall be made perpetual, and the party shall be required to enter into bond, with security, not to continue such trade, business or occupation to the detriment of the health of such neighborhood, or of any other neighborhood within the county. (O. C. 108.)

See P. C. art. 694.

Art. 149. (139) Proceeding when party refuses to give bond.—If the party refuses to give bond when required under the provisions of the preceding article, the court may either commit him to jail, or make an order requiring the sheriff to seize upon the implements of such trade, business or occupation, or the goods and property used in conducting such trade, business or occupation, and destroy the same. (O. C. 108.)

Art. 150. (140) Requisites of bond.—Such bond shall be payable to the state of Texas, in a reasonable amount to [be] fixed by the court, conditioned that the defendant will not carry on such trade, business or occupation, naming the same, at such place, naming the place, or at any other place in the county, to the detriment of the health of the neighborhood. Said bond shall be signed by the defendant and his sureties and dated, and shall be approved by the court taking the same, and filed in such court. (O. C. 109.)

Art. 151. (141) Suit upon bond.—Any such bond, upon the breach thereof, may be sued upon by the district or county attorney, in the name of the state of Texas, in any court having jurisdiction of the amount thereof, within two years after such breach, and not afterwards; and such suits shall be governed by the same rules as civil actions. (O. C. 109.)

Art. 152. (142) Same subject.—It shall be sufficient proof of the breach of any such bond to show that the party continued, after executing the same, to carry on the trade, business or occupation which he bound himself to discontinue; and the full amount of such bond may be recovered of the defendant and his sureties. (O. C. 110.)

Art. 153. (143) Unwholesome food, etc., may be seized and destroyed.—After conviction for selling unwholesome food or liquor, or adulterated medicine, the court shall enter and issue an order to the sheriff, or other proper officer, to seize and destroy such as remains in the hands of the defendant, which order shall forthwith be executed. (O. C. 108.)

CHAPTER SIX

OF THE SUPPRESSION OF OBSTRUCTIONS OF PUBLIC HIGHWAYS

Art. 154. (144) Public highway shall not be obstructed, except, etc.—Whenever any road, bridge, or the crossing of any stream is made, by the proper authority, a public highway, no person shall place an obstruction across such highway, or in any manner prevent the free use of the same by the public, except when expressly authorized by law. (O. C. 112.)

See P. C. art. 811.

Art. 155. (145) Order to remove obstructions, etc.—After indictment or information presented against any person for violating the preceding article, any one, in behalf of the public, may apply to the county judge of the county in which such highway is situated; and, upon hearing proof, such judge, either in term time or in vacation, may issue his written order to the sheriff or other proper officer of the county, directing him to remove the obstruction; but, before the issuance of such order, the applicant therefor shall give bond with security in an amount to be fixed by the judge, to indemnify the accused, in case of his acquittal, for the loss he sustains. Such bond shall be approved by the county judge and filed among the papers in the cause. (O. C. 113.)

Art. 156. (146) Suit upon bond of applicant.—If the defendant in such indictment or information be acquitted after a trial upon the merits of the case, he may maintain a civil action against the applicant and his sureties upon such bond, and may recover the full amount of the bond, or such damages, less than the full amount thereof, as may be assessed by a jury; provided, he shows on the trial that the place was not in fact, at the time he placed the obstruction or impediment thereupon, a public highway established by proper authority, but was in fact his own property or in his lawful possession. (O. C. 114.)

Art. 157. (147) No defect of form, etc.—No mere defect of form shall vitiate any order or proceeding of the commissioners' court in establishing a highway. (O. C. 115.)

Art. 158. (148) (128) When defendant is convicted, obstructions shall be removed at his costs.—Upon the conviction of a defendant for obstructing the free use of any public highway, if such obstruction still exists, the court shall order the sheriff or other proper officer to forthwith remove the same at the costs of the defendant, which costs shall be taxed and collected as other costs in the case.

CHAPTER SEVEN

OF THE SUPPRESSION OF OFFENSES AFFECTING REPUTATION

Art. 159. (149) On conviction for libel, court may order copies destroyed.—On conviction for making, writing, printing, publishing, selling or circulating a libel, the court may, if it be shown that there are in the hands of defendant, or other person, copies of such libel intended for publication, sale or distribution, order all such copies to be seized by the sheriff, or other proper officer, and destroyed. (O. C. 116.)

CHAPTER EIGHT

OF THE SUPPRESSION OF OFFENSES AGAINST PERSONAL LIBERTY

Art. 160. (150) Writ of habeas corpus.—The writ of habeas corpus is the remedy to be used when any person is restrained of his liberty. (O. C. 117.)

See post arts. 183, 223, 224; Ex parte Garrish, 57 S. W. 1123; Ex parte Krug, 60 S. W. 38; Ex parte Drane, 191 S. W. 1156; Ex parte Alderete, 203 S. W. 763.

1. DEFINITION AND OBJECT OF THE WRIT

Art. 161. (151) What a writ of habeas corpus is, etc.—A writ of habeas corpus is an order issued by a court or judge of competent jurisdiction, directed to any one having a person in his custody, or under his restraint, commanding him to produce such person, at a time and place named in the writ, and show why he is held in custody or under restraint. (O. C. 118.)

Art. 162. (152) To whom directed, etc.—The writ, as all other process, runs in the name of "The State of Texas." It is to be addressed to a person having another under restraint, or in his custody, describing, as near as may be, the name of the office, if any, of the person to whom it is directed, and the name of the person said to be detained. It shall fix the time and place of return, and be signed by the judge or by the clerk, with his seal, where issued by a court. (O. C. 119.)

Art. 163. (153) Not invalid for want of form.—The writ of habeas corpus is not invalid, nor shall it be disobeyed for any want of form, if it substantially appear that it is issued by competent authority, and the writ sufficiently show the object and design of its issuance. (O. C. 120.)

Art. 164. (154) Provisions relating to, how construed.—Every provision relating to the writ of habeas corpus shall be most favorably construed in order to give effect to the remedy, and protect the rights of the person seeking relief under it. (O. C. 121.)

2. BY WHOM AND WHEN GRANTED

Art. 165. (155) By whom writ may be granted.—The court of appeals or either of the judges, the district courts or any judge thereof, the county courts or any judge thereof, have power to issue the writ of habeas corpus; and it is their duty, upon proper application, to grant the writ under the rules herein prescribed. (O. C. 122.)

See ante arts. 84, 92, 100.

The above provision is obviously antiquated. It has passed through the revisions of 1895 and 1911 in its anachroneous state. The index to this code will show the legislation on the subject of the power to issue the writ of habeas corpus enacted before and since the above article was constructed in the ancient day.

Art. 166. (156) Before indictment, writ returnable, where, etc.—Before indictment found, the writ may be made returnable to any county in the state. (O. C. 123.)

Art. 167. (157) After indictment, returnable, where, etc.—After indictment found, the writ must be made returnable in the county where the offense has been committed, on account of which the applicant stands indicted. (O. C. 124.)

Art. 168. (158) When the applicant is charged with felony.—In all cases where a person is confined on a charge of felony, and indictment has been found against him, he may apply to the judge of the district court for the district in which he is indicted; or, if there be no judge within the district, then to the judge of any district whose residence is nearest to the court house of the county in which the applicant is held in custody. (O. C. 125.)

Art. 169. (159) (139) When the applicant is charged with misdemeanor.—In all cases where a person is confined on a charge of misdemeanor, he may apply to the county judge of the county in which the misdemeanor is charged to have been committed, or, if there be no county judge in said county, then to the county judge whose residence is nearest to the court house of the county in which the applicant is held in custody.

Art. 170. (160) Proceedings under the writ.—When application has been made to a judge under the circumstances set forth in the two preceding articles, it shall be his duty to appoint a time when he will examine the cause of the applicant, and issue the writ returnable at that time, in the county where the offense is charged in the indictment or information to have been committed. He shall also specify some place in the county where he will hear the application. (O. C. 129.)

See ante arts. 166, 167.

Art. 171. (161) The time appointed for hearing.—The time so appointed shall be the earliest day which the judge can devote to hearing the cause of the applicant, consistently with other duties. (O. C. 127.)

Art. 172. (162) Who may present petition for relief.—Either the party for whose relief the writ is intended, or any person for him, may present a petition to the proper authority for the purpose of obtaining relief. (O. C. 128.)

Art. 173. (163) The word "applicant" refers to.—The word "applicant," as used in this chapter, refers to the person for whose relief the writ is asked, though, as above provided, the petition may be signed and presented by any other person. (O. C. 129.)

Art. 174. (164) Requisites of petition.—The petition must state substantially—

1. That the person for whose benefit the application is made is illegally restrained in his liberty, and by whom—naming both parties, if their names are known, or, if unknown, designating and describing them.

2. When the party is confined or restrained by virtue of any writ, order or process, or under color of either, a copy shall be annexed to the petition, or it shall be stated that a copy can not be obtained.

3. When the confinement or restraint is not by virtue of any writ, order or process, the petition may state only that the party is illegally confined or restrained of his liberty.

4. There must be a prayer in the petition for the writ of habeas corpus.

5. Oath must be made that the allegations of the petition are true, according to the belief of the petitioner. (O. C. 130.)

Art. 175. (165) The writ shall be granted without delay, unless, etc.—The

writ of habeas corpus shall be granted without delay by the judge or court receiving the petition, unless it be manifest by the statements of the petition itself, or some documents annexed to it, that the party is entitled to no relief whatever. (O. C. 131.)

See Ex parte Blankenship, 57 S. W. 646; Ex parte Alderete, 203 S. W. 763.

Art. 176. (166) Writ may be issued without application.—A judge of the district or county court who has knowledge that any person is illegally confined or restrained in his liberty within his district or county may, if the case be one within his jurisdiction, issue the writ of habeas corpus, without any application being made for the same. (O. C. 132.)

Art. 177. (167) Judge may issue a warrant of arrest, when.—Whenever it shall be made to appear, by satisfactory evidence, to a judge of the court of appeals, or a judge of the district or county court, that any one is held in illegal confinement or custody, and there is good reason to believe that he will be carried out of the state or suffer some irreparable injury before he can obtain relief in the usual course of law, or whenever the writ of habeas corpus has been issued and disregarded, the said judges, or either of them, if the case be one in which they have power to grant the writ of habeas corpus, may issue a warrant to any peace officer, or to any person specially named by said judge, directing him to take and bring such person before such judge, to be dealt with according to law. (O. C. 133.)

See ante art. 176.

Art. 178. (168) The person having custody of the prisoner may be arrested, when.—Where it appears by the proof offered, under circumstances mentioned in the preceding article, that the person charged with having illegal custody of the prisoner is, by such act, guilty of an offense against the law, the judge may, in the warrant, order that he be arrested and brought before him; and, upon examination, he may be committed, discharged, or held to bail, as the law and the nature of the case may require. (O. C. 134.)

Art. 179. (169) Proceedings under the warrant.—The officer charged with the execution of the warrant shall bring the persons therein mentioned before the judge or court issuing the same, who shall inquire into the cause of the imprisonment or restraint, and make an order thereon, as in cases of habeas corpus, according to the rules laid down in this chapter, either remanding into custody, discharging or admitting to bail the party so imprisoned or restrained. (O. C. 135.)

Art. 180. (170) Officer executing warrant may exercise same power, etc.—The same power may be exercised by the officer executing the warrant (and in like manner) in cases arising under the foregoing articles as is exercised in the execution of warrants of arrest according to the provisions of this Code. (O. C. 136.)

Art. 181. (171) The words "confined," "imprisoned," etc., refer to, etc.—The words, "confined," "imprisoned," "in custody," "confinement," "imprisonment," refer, not only to the actual, corporeal and forcible detention of a person, but likewise to any and all coercive measures by threats, menaces or the fear of injury, whereby one person exercises a control over the person of another, and detains him within certain limits. (O. C. 137.)

Art. 182. (172) By restraint, is meant, etc.—By "restraint," is meant the kind of control which one person exercises over another, not to confine him within certain limits, but to subject him to the general authority and power of the person claiming such right. (O. C. 138.)

See Ex parte Snodgrass, 65 S. W. 1061; Ex parte Alderete, 203 S. W. 763.

Art. 183. (173) The writ of habeas corpus is intended to be applicable, when.—The writ of habeas corpus is intended to be applicable to all such cases of confinement and restraint, where there is no lawful right in the person exercising the power, or where, though the power in fact exists, it is exercised in a manner or degree not sanctioned by law. (O. C. 139.)

See ante art. 160; Ex parte Blankenship, 57 S. W. 646; Ex parte Alderete, 203 S. W. 763.

Art. 184. (174) Person committed in default of bail is entitled to the writ, when.—Where a person has been committed to custody for failing to enter into bond, he is entitled to the writ of habeas corpus, if it be stated in the petition that there was no sufficient cause for requiring bail, or that the bail required is excessive; and, if the proof sustains the petition, it will entitle the party to be discharged, or have the amount of the bail reduced, according to the facts of the case. (O. C. 141.)

Art. 185. (175) Person afflicted with disease may be removed, when.—When a judge or court authorized to grant writs of habeas corpus shall be satisfied, upon investigation, that a person in legal custody is afflicted with a disease which will render a removal necessary for the preservation of life, an order may be made for the removal of the prisoner to some other place where his health will not be likely to suffer; or he may be admitted to bail, when it appears that any species of confinement will endanger his life. (O. C. 141.)

Ex parte Smith, 64 S. W. 1052; Ex parte Forney, 76 S. W. 440; Ex parte Jones, 200 S. W. 1085.

3. SERVICE AND RETURN OF THE WRIT, AND PROCEEDINGS THEREON

Art. 186. (176) Who may serve writ.—The service of the writ may be made by any person competent to testify. (O. C. 143.)

Art. 187. (177) How writ may be served and returned.—The writ may be served by delivering a copy of the original to the person who is charged with having the party under restraint or in custody, and exhibiting the original, if demanded; if he refuse to receive it, he shall be informed verbally of the purport of the writ. If he refuses admittance to the person wishing to make the service, or conceals himself, a copy of the writ may be fixed upon some conspicuous part of the house where such person resides or conceals himself, or of the place where the prisoner is confined; and the person serving the writ of habeas corpus shall, in all cases, state fully, in making the re-

turn, the manner and the time of the service of the writ. (O. C. 144.)

Art. 188. (178) The return shall be under oath, if made by a person other than an officer.—The return of a writ of habeas corpus, under the provisions of the preceding article, if made by any person other than an officer, shall be under oath. (O. C. 145.)

Art. 189. (179) The person on whom the writ is served shall obey same, etc.—The person on whom the writ of habeas corpus is served shall immediately obey the same, and make the return required by law upon the copy of the original writ served on him, and this, whether the writ be directed to him or not. (O. C. 146.)

See post arts. 194, 195.

Art. 190. (180) How the returns shall be made.—The return is made by stating in plain language upon the copy of the writ or some paper connected with it—

1. Whether it is true or not, according to the statement of the petition, that he has in his custody, or under his restraint, the person named or described in such petition.

2. By virtue of what authority, or for what cause, he took and detains such person.

3. If he had such person in his custody, or under restraint at any time before the service of the writ, and has transferred him to the custody of another, he shall state particularly to whom, at what time, for what reason or by what authority he made such transfer.

4. He shall annex to his return the writ or warrant by virtue of which he holds the person in custody, if any writ or warrant there be.

5. The return must be signed and sworn to by the person making it. (O. C. 147, 148.)

Art. 191. (181) The person in custody shall be brought before the judge, etc.—The person on whom the writ is served shall bring also before the judge the person in his custody, or under his restraint, unless it be made to appear that, by reason of sickness, he can not be removed; in which case, another day may be appointed by the judge or court for hearing the cause, and for the production of the person confined; or the application may be heard and decided without the production of the person detained, by the consent of his counsel. (O. C. 149.)

Art. 192. (182) (162) Custody of prisoner pending examination on habeas corpus.—When the return of the writ has been made, and the applicant brought before the court, he is no longer detained on the original warrant or process, but under the authority of the habeas corpus; and the safe keeping of the prisoner, pending the examination or hearing, is entirely under the direction and authority of the judge or court issuing the writ, or to which the return is made. He may be bailed from day to day, or be remanded to the same jail whence he came, or to any other place of safe keeping under the control of the judge or court, till the case is finally determined.

Art. 193. (183) The court shall allow reasonable time.—The court or judge granting the writ of habeas corpus shall allow reasonable time for the production of the person detained in custody. (O. C. 150.)

Art. 194. (184) Person having the illegal custody of another who refuses to obey the writ, etc., shall be punished, how.—When service has been made upon a person charged wth the illegal custody of another, if he refuses to obey the writ and make the return required by law, or, if he refuses to receive the writ, or conceals himself, the court or judge issuing the writ shall issue a warrant directed to any officer or other suitable person willing to execute the same, commanding him to arrest the person charged with the illegal custody or detention of another, and bring him before such court or judge; and, when such person shall have been arrested and brought before the court or judge, if he still refuses to return the writ, or do not produce the person in his custody, he shall be committed to prison, and remain there until he is willing to obey the writ of habeas corpus, and until he pays all the costs of the proceeding. (O. C. 151.)

See post art. 222.

Art. 195. (185) Further penalty, etc., for disobeying writ.—Any person disobeying the writ of habeas corpus shall also be liable to a civil action at the suit of the party detained, and shall pay in such suit fifty dollars for each day of illegal detention and restraint, after service of the writ, to be recovered in any court of competent jurisdiction; and it shall be deemed that a person has disobeyed the writ who detains a prisoner a longer time than three days after service thereof, and one additional day for every twenty miles he must necessarily travel in carrying the person held from the place of his detention to the place where the application is to be heard, unless where further time is allowed in the writ for making the return thereto. (O. C. 152.)

Art. 196. (186) Applicant for writ may be brought before court.—In case of the disobedience of the writ of habeas corpus, the person for whose relief it is intended may also be brought before the court or judge having competent authority, by an order for that purpose, issued to any peace officer or other proper person specially named. (O. C. 153.)

Art. 197. (187) Death, etc., of applicant sufficient return of writ.—It is a sufficient return of the writ of habeas corpus that the person, once detained, has died or escaped, or that by some superior force he has been taken from the custody of the person making the return; but where any such cause shall be assigned for not producing the applicant, the court or judge shall proceed to hear testimony; and the facts so stated in the return shall be proved by satisfactory evidence. (O. C. 154.)

Art. 198. (188) Proceedings when a prisoner dies.—When a prisoner confined in jail, or who is in legal custody, shall die, the officer having charge of him shall forthwith report the same to a justice of the peace of the county, who shall hold an inquest to ascertain the cause of his death, which may be done by calling any number of physicians and surgeons. All the proceedings had in such cases shall be reduced to writing, certified and returned as in other cases of inquest; a certified copy of which proceedings shall be sufficient proof of the death of the prisoner at the hearing of an application under habeas corpus. (O. C. 158.)

See post ch. 1, title 13.

Art. 199. (189) Who shall represent the state in habeas corpus cases.—In fel-

ony cases, it shall be the duty of the district attorney of the district where the case is pending, if there be one and he be present, to represent the state in the proceeding by habeas corpus. If no district attorney be present, the county attorney, if present, shall represent the state; if neither of said officers be present, the court or judge may appoint some well qualified practicing attorney to represent the state, who shall be paid the same fee as is allowed district attorneys for like services. (O. C. 156.)

See ante arts. 30, 37.

Art. 200. (190) Prisoner shall be discharged, when.—The judge or court before whom a person is brought by writ of habeas corpus shall examine the writ and the papers attached to it; and, if no legal cause be shown for the imprisonment or restraint, or, if it appear that the imprisonment or restraint, though at first legal, can not for any cause be lawfully prolonged, the applicant shall be discharged. (O. C. 157.)

Art. 201. (191) Where party is indicted for capital offense.—If it appear by the return and papers attached that the party stands indicted for a capital offense, the judge or court having jurisdiction of the case shall, nevertheless, proceed to hear such testimony as may be offered on the part, both of the applicant and the state, and may either remand the defendant or admit him to bail, as the law and the facts of the case may justify. (O. C. 158.)

Art. 202. (192) (172) When court has no jurisdiction.—If it appear by the return and papers attached that the case is one over which the judge or court has no jurisdiction, such court or judge shall at once remand the applicant to the person from whose custody he has been taken.

Art. 203. (193) Where no indictment has been found, etc.—In all cases where no indictment has been found, it shall not be deemed that any presumption of guilt has arisen from the mere fact that a criminal accusation has been made before a competent authority. (O. C. 159.)

Art. 204. (194) Action of court upon examination.—The judge or court, after having examined the return and all documents attached, and heard the testimony offered on both sides, shall, according to the facts and circumstances of the case, proceed either to remand the party into custody, admit him to bail or discharge him; provided, that no defendant shall be discharged after indictment without bail. (O. C. 160.)

See Ex parte Bishop, 61 S. W. 308; Ex parte Adams, 90 S. W. 24.

Art. 205. (195) If the commitment be informal or void, etc.—If it shall appear that the applicant is detained or held under a warrant of commitment which is informal, or void; yet, if from the document on which the warrant was based, or from the proof on the hearing of the habeas corpus, it appears that there is probable cause to believe that an offense has been committed by the prisoner, he shall not be discharged, but shall be committed or held to bail by the court or judge trying the application under habeas corpus. (O. C. 161.)

Art. 206. (196) If there be probable cause to believe an offense has been committed.—Where, upon an examination under habeas corpus, it shall appear to the court or judge that there is probable cause to believe that an offense has been committed by the prisoner, he shall not be discharged, but shall be committed or admitted to bail, according to the facts and circumstances of the case. (O. C. 162.)

See Ex parte Hayes, 64 S. W. 1049; Ex parte Oakley, 114 S. W. 131; Ex parte Lambert, 172 S. W. 783.

Art. 207. (197) The court may summon the magistrate who issued the warrant.—For the purpose of ascertaining the grounds on which an informal or void warrant has been issued, the judge or court may cause to be summoned the magistrate who issued the warrant, and may, by an order, require him to bring with him all the papers and proceedings touching the matter. The attendance of such magistrate and the production of such papers may be enforced by warrant of arrest, if necessary. (O. C. 163.)

Art. 208. (198) A written issue in case under habeas corpus not necessary.—It shall not be necessary, on the trial of any cause arising under habeas corpus, to make up a written issue, though it may be done by the applicant for the writ. He may except to the sufficiency of, or controvert the return of any part thereof, or allege any new matter in avoidance. If written denial on his part be not made, it shall be considered, for the purpose of investigation, that the statements of said return are contested by a denial of the same; and the proof shall be heard accordingly, both for and against the applicant for relief. (O. C. 164.)

Art. 209. (199) The applicant shall open and conclude the argument.—The applicant shall have the right to open and conclude, by himself or counsel, the argument upon the trial under habeas corpus. (O. C. 165.)

See Ex parte Newman, 41 S. W. 628.

Art. 210. (200) Costs of the proceedings, how disposed of.—The court or judge trying the cause under habeas corpus may make such order as is deemed advisable or right concerning the cost of bringing the defendant before him, and all other costs of the proceeding, awarding the same either against the person to whom the writ was directed, the person seeking relief, or may award no costs at all. (O. C. 166.)

Art. 211. (201) If the court be in session, the clerk shall record the proceedings.—If a writ of habeas corpus be made returnable before a court in session, all the proceedings had shall be entered of record by the clerk thereof, as would be done in any other case pending in such court; and, when the application is heard out of the county where the offense was committed, or in the court of appeals, the clerk shall transmit a certified copy of all the proceedings upon the application to the clerk of the court which has jurisdiction of the offense. (O. C. 167.)

See Ex parte Blankenship, 57 S. W. 646.

Art. 212. (202) If the proceedings be had before a judge in vacation, etc.—If the return is made and the proceedings had before a judge of a court in vacation, he shall cause all of the proceedings to be written, shall certify to the same, and cause them to be filed with the clerk of the court which has jurisdiction of the offense, whose duty it shall be to keep them safely. (O. C. 168.)

See Ex parte Blankenship, 57 S. W. 646.

Art. 213. (203) Provisions of the two preceding articles refer to, etc.—The provisions of the two preceding articles refer only to cases where an applicant is held under accusation for some offense; in all other cases the proceedings had before the judge shall be filed and kept by the clerk of the court hearing the case. (O. C. 169.)

Art. 214. (204) Court may grant all necessary orders, etc.—The court or judge granting a writ of habeas corpus may grant all necessary orders to bring before him the testimony taken before the examining court, and may issue all process for enforcing the attendance of witnesses which is allowed in any other proceedings in a criminal action. (O. C. 170.)

Art. 215. (205) Meaning of "return."—The word "return," as used in this chapter, refers to and means the report made by the officer or person charged with serving the writ of habeas corpus, and also the answer made by the person served with such writ. (O. C. 171.)

4. GENERAL PROVISIONS

Art. 216. (206) A person discharged before the indictment shall not be again imprisoned, unless, etc.—Where a person, before indictment found against him, has been discharged or held to bail on habeas corpus by order of a court or judge of competent jurisdiction, he shall not be again imprisoned or detained in custody on an accusation for the same offense, until after he shall have been indicted, unless delivered up by his bail in order to release themselves from their liability. (O. C. 172.)

See Ex parte Haubelt, 123 S. W. 607.

Art. 217. (207) A person once discharged, or admitted to bail, may be committed, when.—Where a person once discharged or admitted to bail is afterward indicted for the same offense for which he has been once arrested, he may be committed on the indictment, but shall be again entitled to the writ of habeas corpus, and may, notwithstanding the indictment, be admitted to bail, if the facts of the case render it proper; but in cases where, after indictment is found, the cause of the defendant has been investigated on habeas corpus, and an order made, either remanding him to custody, or admitting him to bail, he shall neither be subject to be again placed in custody, unless when surrendered by his bail, or when the trial of his cause commences before a petit jury, nor shall he be again entitled to the writ of habeas corpus, except in the special cases mentioned in articles 185 and 219. (O. C. 173.)

Art. 218. (208) A person committed for a capital offense shall not be entitled to the writ, unless, etc.—If the accusation against the defendant for a capital offense has been heard on habeas corpus before indictment found, and he shall have been committed after such examination, he shall not be entitled to the writ, unless in the special cases mentioned in articles 185 and 219. (O. C. 174.)

See Ex parte Forney, 76 S. W. 440.

Art. 219. (209) A party may obtain the writ a second time, when, etc.—A party may obtain the writ of habeas corpus a second time by stating in application therefor that, since the hearing of his first application, important testimony has been obtained which it was not in his power to produce at the former hearing. He shall also set forth the testimony so newly discovered; and, if it be that of a witness, the affidavit of the witness shall also accompany such second application. (O. C. 175.)

Art. 220. (210) Officer refusing to execute writ, etc., shall be punished, etc.—Any officer to whom a writ of habeas corpus, or other writ, warrant or process authorized by this chapter shall be directed, delivered or tendered, who shall refuse to execute the same according to his directions, or who shall wantonly delay the service or execution of the same, is guilty of an offense, and shall be punished according to the provisions of the Penal Code; he shall also be liable to fine as for contempt of court. (O. C. 178.)

See P. C. 388.

Art. 221. (211) Any one having the custody of another who refuses to obey the writ, etc., shall be punished, how.—Any one having another in his custody, or under his power, control or restraint who refuses to obey a writ of habeas corpus, or who evades the service of the same, or places the person illegally detained under the control of another, removes him, or in any other manner attempts to evade the operation of the writ, is guilty of a penal offense, and shall be punished as provided in the Penal Code, and shall also be dealt with as provided in article 193 of this Code. (O. C. 178.)

See ante, arts. 194, 195; P. C. arts. 1039, 1045.

Art. 222. (212) Any jailer, etc., who refuses to furnish a copy of process under, etc.—Any jailer, sheriff or other officer who has a prisoner in his custody and refuses, upon demand, to furnish a copy of the process under which he holds the person, is guilty of an offense. (O. C. 179.)

Art. 223. (213) Persons shall not be discharged under writ of habeas corpus, when.—No person shall be discharged under the writ of habeas corpus who is in custody by virtue of a commitment for any offense exclusively cognizable by the courts of the United States, or by order or process issuing out of such courts in cases where they have jurisdiction, or who is held by virtue of any legal engagement or enlistment in the army, or who, being rightfully subject to the rules and articles of war, is confined by any one legally acting under the authority thereof, or who is held as a prisoner of war under the authority of the United States. (O. C. 180.)

Art. 224. (214) This chapter applies to what cases.—This chapter applies to all cases of habeas corpus for the enlargement of persons illegally held in custody, or in any manner restrained of their personal liberty, for the admission of prisoners to bail, and for the discharge of prisoners before indictment, upon a hearing of the testimony. Instead of the writ of habeas corpus in other cases where heretofore used, a simple order shall be substituted. (O. C. 181.)

TITLE 4

THE TIME AND PLACE OF COMMENCING AND PROSECUTING CRIMINAL ACTIONS

CHAPTER ONE

THE TIME WITHIN WHICH CRIMINAL ACTIONS MAY BE COMMENCED

Art. 225. (215) For treason and forgery.—An indictment for treason may be presented within twenty years, and for forgery or the uttering, using or passing of forged instruments, within ten years from the time of the commission of the offense, and not afterward. (O. C. 182, as amended Revision, 1879.)

Art. 226. (216) For rape, one year.—An indictment for the offense of rape may be presented within one year, and not afterward. (O. C. 184.)

See Duncan v. S., 59 S. W. 267; Gonzales v. S., 62 S. W. 1060.

Art. 227. (217) For theft, etc., five years.—An indictment for theft punishable as a felony, arson, burglary, robbery and counterfeiting may be presented within five years, and not afterward. (O. C. 183.)

Art. 228. (218) (199) Other felonies.—An indictment for all other felonies may be presented within three years from the commission of the offense, and not afterward; except murder, for which an indictment may be presented at any time.

Waters-Pierce Oil Co. v. S., 106 S. W. 918.

Art. 229. (219) Misdemeanors, two years.—For all misdemeanors, an indictment or information may be presented within two years from the commission of the offense, and not afterward. (O. C. 186.)

Waters-Pierce Oil Co. v. S., 106 S. W. 918; Ex parte Hoard, 140 S. W. 449.

Art. 230. (220) Days to be excluded from computation of time.—The day on which the offense was committed and the day on which the indictment or information is presented shall be excluded from the computation of time. (Revision, 1879.)

Art. 231. (221) Absence from the state not computed.—The time during which a person accused of an offense is absent from the state shall not be computed in the period of limitation. (O. C. 187.)

Art. 232. (222) An indictment is "presented," when.—An indictment is to be considered as "presented," when it has been duly acted upon by the grand jury and received by the court. (O. C. 188.)

Art. 233. (223) An information is "presented," when.—An information is to be considered as "presented" when it has been filed by the proper officer in the proper court. (O. C. 189.)

CHAPTER TWO

OF THE COUNTY WITHIN WHICH OFFENSES MAY BE PROSECUTED

Art. 234. (224) For offenses committed wholly or in part without the state.—Prosecutions for offenses committed wholly or in part without, and made punishable by law within, this state, may be commenced and carried on in any county in which the offender is found. (O. C. 190.)

See P. C. 949, 950; post art. 253.

Art. 235. (225) Forgery and uttering forged papers may be prosecuted where.—The offense of forgery may be prosecuted in any county where the written instrument was forged, or where the same was used or passed, or attempted to be used or passed; all forgeries and uttering, using or passing, of forged instruments in writing, which concern or affect the title to land in this state, may also be prosecuted in the county in which the seat of government is located, or in the county in which the land, or a part thereof concerning or affecting the title to which the forgery has been committed, is situated. (O. C. 190a).

See P. C. arts. 949, 950; Batte v. S., 122 S. W. 561; Meredith v. S., 164 S. W. 1019.

Art. 236. (226) Counterfeiting, where.—The offense of counterfeiting may be prosecuted in any county where the offense was committed, or where the counterfeit coin was passed, or attempted to be passed. (O. C. 207.)

See P. C. art. 954; Stroube v. S., 51 S. W. 357.

Art. 237. (227) Perjury and false swearing, where.—The offense of perjury and false swearing may be prosecuted in the county where committed, or in the county where the false statement is used or attempted to be used. (O. C. 190a.)

See P. C. art. 304.

Art. 238. (228) Offenses committed on the boundary of two counties.—An offense committed on the boundary of any two counties, or within four hundred yards thereof, may be prosecuted and punished in either county; and the indictment or information may allege the offense to have been committed in the county where it is prosecuted. (O. C. 191.)

See Hackney v. S., 74 S. W. 554; McElroy v. S., 111 S. W. 948; Madrid v. S., 161 S. W. 93.

Art. 239. (229) Person dying out of the state of an injury inflicted in the state, etc.—If any person, being at the time within this state, shall inflict upon another, also within this state, an injury of which such person afterward dies without the limits of this state, the person so offending shall be liable to prosecution in the county where the injury was inflicted. (O. C. 192.)

Art. 240. (230) Person within the state inflicting injury on another out of the state, where prosecuted.—If a person, being at the time within this state, shall inflict upon another out of this state, an injury, by reason of which, the injured person dies without the limits of this state, he may be prosecuted in the county where he was when the injury was inflicted. (O. C. 193.)

Art. 241. (231) Person without the state inflicting an injury on one within the state, where prosecuted.—If a person, being at the time without the limits of this state, shall inflict upon another who is at the time within this state, an injury causing death, he may be prosecuted in the county where the person injured dies. (O. C. 194.)

Art. 242. (232) An offense committed on a stream, the boundary of this state, where prosecuted.—If an offense be committed upon any river or stream, the boundary of this state, it may be prosecuted in the county the boundary of which is upon such stream or river, and the county seat of which is nearest the place where the offense was committed. (O. C. 195.)

Art. 243. (233) Person receiving an injury in one county and dying in another, offender, where prosecuted.—If a person receive an injury in one county and dies in another by reason of such injury, the offender may be prosecuted in the county where the injury was received, or where the death occurred. (O. C. 196.)

Art. 244. (234) An offense committed on a stream, etc., the boundary between two counties, punishable, where.—Where a river or other stream or highway is the boundary between two counties, any offense committed on such river, stream or highway at a place where it is such boundary, is punishable in either county; and it may be alleged in the indictment or information that the offense was committed in the county where it is prosecuted. (O. C. 197.)

See Hackney v. S., 74 S. W. 555.

Art. 245. (235) Property stolen in one county and carried to another, offender prosecuted where.—Where property is stolen in one county and carried off by the offender to another, he may be prosecuted either in the county where he took the property or in any other county through or into which he may have carried the same. (O. C. 198.)

See P. C. art. 1323; Thurman v. S., 40 S. W. 502; Coleman v. S., 55 S. W. 836; Ballow v. S., 58 S. W. 1022; Grant v. S., 58 S. W. 1026; Pearce v. S., 98 S. W. 861; Dugat v. S., 148 S. W. 789; Rogers v. S., 153 S. W. 856.

Art. 246. Mortgaged property taken from one county and unlawfully disposed of in another, offender prosecuted where.—When mortgaged property is taken from one county and unlawfully disposed of in another county, the offender may be prosecuted, either in the county in which such property was disposed of, or in the county from which it was removed, or in which the lien on it is registered. (Acts 1899, p. 8.)

Art. 247. (236) Accomplices and accessories may be prosecuted, where.—Accomplices and accessories to the crime of theft may be prosecuted in any county where the theft was committed, or in any other county through or into which the property may be carried by either the principal, accomplice or accessory to the offense. (Act April 4, 1889.)

Art. 248. (237) Receiving and concealing stolen property may be prosecuted where.—The offense of receiving and concealing stolen property may be prosecuted in the county where the theft was committed, or in any other county through or into which the property may have been carried by the person stealing the same, or in any county where the same may have been received or concealed by the offender. (Id.)

See Thurman v. S., 40 S. W. 795; Mooney v. S., 176 S. W. 52.

Art. 249. (238) Offenses committed out of the state by commissioner of deeds prosecuted where.—Offenses committed out of this state by a commissioner of deeds, or other officer acting under the authority of this state, may be prosecuted in any county of this state. (O. C. 200.)

See P. C. art. 352.

Art. 250. (239) Offenses committed on vessels within the state prosecuted where.—Where an offense is committed on board a vessel which is at the time upon any navigable water within the boundaries of this state, the offense may be prosecuted in any county through which the vessel is navigated in the course of her voyage, or in the county where the voyage commences or terminates. (O. C. 201.)

Art. 251. (240) Offense of embezzlement prosecuted where.—The offense of embezzlement may be prosecuted in any county in which the offender may have taken or received the property, or through or into which he may have undertaken to transport it. (O. C. 203.)

See P. C. art. 1416; Schweir v. S., 94 S. W. 1049; Pearce v. S., 98 S. W. 861; O'Marrow v. S., 147 S. W. 252; Poteet v. S., 153 S. W. 863; McDaniel v. S., 186 S. W. 320.

Art. 252. (241) False imprisonment, kidnaping and abduction prosecuted where.—The jurisdiction for the trial of the offenses of false imprisonment, kidnaping and abduction, belongs either to the county in which the offense was committed, or to any county through, into or out of which the person falsely imprisoned, kidnaped or taken in such manner as to constitute abduction may have been carried. (O. C. 204.)

See P. C. art. 1039 et seq.

Art. 253. (242) Conspiracy, where prosecuted.—The offense of conspiracy may be prosecuted in the county where the conspiracy was entered into, or in the county where the same was agreed to be executed; and, when the conspiracy is entered into in another state, territory or county, to commit an offense in this state, the offense may be prosecuted in the county where such offense was agreed to be committed, or in any county where any one of the conspirators may be found, or in the county where the seat of government is located. (Added on Revision.)

See P. C. art. 1433; Dawson v. S., 40 S. W. 731.

Art. 254. Prosecution for rape commenced and carried on where, takes precedence of other cases.—Prosecutions for rape may be commenced and carried on in the county in which the offense is committed, or in any county of the judicial district in which the offense is committed, or in any county of the judicial district the judge of which resides nearest the county seat of the county in which the offense is committed. When the judicial district comprises only one county, prosecutions may be commenced and carried on in that county, if the offense be committed there, or in any adjoining county. When it shall come to the knowledge of any district judge, whose court has jurisdiction under this act, that the offense of rape has probably been committed, it shall be his duty immediately, if his court be in session, and, if not in session, then, at the first term thereafter in any county of the district, to call the attention of the grand jury thereto; and, if his court be in session, but the grand jury shall have been discharged he shall immediately recall said grand jury for the consideration of the accusation. Prosecutions for rape shall take precedence of all cases in all courts; and the district courts are hereby authorized and directed to change the venue in such cases whenever it shall be necessary to secure a speedy trial. (Acts 1897, 1st S. S. p. 16.)

See Belcher v. S., 44 S. W. 519; Parker v. S., 44 S. W. 1132; Mischer v. S., 53 S. W. 627; Bartlett v. S., 53 S. W. 629; Griffey v. S., 56 S. W. 52; Harper v. S., 207 S. W. 96.

Art. 255. (243) Conviction or acquittal in another state bar to prosecution in this state.—When an act has been commit-

ted out of this state by an inhabitant thereof, and such act is an offense by the laws of this state, and is also an offense by the laws of the place where the same was done, a conviction or acquittal of the offender, under the laws of the place where the offense was committed, is a bar to the prosecution in this state. (O. C. 205.)

See post, art. 601.

Art. 256. (244) Conviction, etc., in one county, bar to prosecution in another, when.—Where different counties have jurisdiction of the same offense, conviction or acquittal of the offense in one county is a bar to any further prosecution in any other county. (O. C. 206.)

See post, art. 601.

Art. 257. (245) Proof of jurisdiction sufficient to sustain allegation of venue, when.—In all cases mentioned in the foregoing articles of this chapter, the indictment or information, or any proceeding in the case, may allege that the offense was committed in the county where the prosecution is carried on; and, to sustain the allegation of venue, it shall only be necessary to prove that by reason of the facts existing in the case, the county where such prosecution is carried on has jurisdiction. (O. C. 207.)

Art. 258. (246) Offenses not enumerated, prosecuted where.—In all cases, except those enumerated in previous articles of this chapter, the proper county for the prosecution of offenses is that in which the offense was committed. (O. C. 208.)

See Moore v. S., 40 S. W. 288; Jessup v. S., 68 S. W. 988.

TITLE 5

OF ARREST, COMMITMENT AND BAIL

CHAPTER ONE

OF ARREST WITHOUT WARRANT

Art. 259. (247) Arrest without warrant, when.—A peace officer or any other person may, without warrant, arrest an offender when the offense is committed in his presence or within his view, if the offense is one classed as a felony, or as an "offense against the public peace." (O. C. 209.)

See ante arts. 42, 43, 121, 122, 141, 147; S. A. & A. P. Ry. v. Griffin, 48 S. W. 543; M. K. & T. Ry. v. Warner, 49 S. W. 254; Lynch v. S., 57 S. W. 1130; Brown v. King, 93 S. W. 1017; Id., 94 S. W. 328; James v. San Antonio & A. P. Ry. Co., 116 S. W. 642; Williams v. S., 142 S. W. 899; Presley v. Ft. Worth & D. C. Ry. Co., 145 S. W. 669; Riter v. Neatherly, 157 S. W. 439; S. H. Kress & Co. v. Lawrence, 162 S. W. 448; Stewart v. S., 174 S. W. 1077; Gilbert v. S., 181 S. W. 200; Samino v. S., 204 S. W. 233.

Art. 260. (248) Same subject.—A peace officer may arrest, without warrant, when a felony or breach of the peace has been committed in the presence or within the view of a magistrate; and such magistrate shall verbally order the arrest of the offender. (O. C. 210.)

See Presley v. Ft. Worth & D. C. Ry. Co., 145 S. W. 669.

Art. 261. (249) Municipal authorities may authorize arrest without warrant, when.—The municipal authorities of towns and cities may establish rules authorizing the arrest, without warrant, of persons found in suspicious places, and under circumstances which reasonably show that such persons have been guilty of some felony or breach of the peace, or threaten, or are about to commit some offense against the laws. (O. C. 211.)

See Jaske v. Irvine, 43 S. W. 278; Early v. S., 97 S. W. 82; Gold v. Campbell, 117 S. W. 463; Presley v. Ft. Worth & D. C. Ry. Co., 145 S. W. 669; Minter v. S., 159 S. W. 286; Haller v. S., 162 S. W. 872.

Art. 262. (250) May arrest without warrant when felony has been committed.—Where it is shown by satisfactory proof to a peace officer, upon the representation of a credible person, that a felony has been committed, and that the offender is about to escape, so that there is no time to procure a warrant, such peace officer may, without warrant, pursue and arrest the person accused. (O. C. 212.)

See ante art. 45; Cortez v. S., 69 S. W. 537; Cortez v. S., 83 S. W. 812; Presley v. Ft. Worth & D. C. Ry. Co., 145 S. W. 669; Bader v. S., 183 S. W. 146; Burkhardt v. S., 202 S. W. 513.

Art. 263. (251) In all such cases the officer may adopt the same measures as, etc.—In all the cases enumerated where arrests may be lawfully made without warrant, the officer or other person making the arrest is justified in adopting all the measures which he might adopt in cases of arrest under warrant, as provided in this Code. (O. C. 213.)

See post arts. 280, 287-290.

Art. 264. (252) In such cases, must take the offender before the nearest magistrate.—In all the cases enumerated in this chapter, the person making the arrest shall immediately take the person arrested before the magistrate who may have ordered the arrest, or before the nearest magistrate where the arrest was made, without an order. (O. C. 214.)

Gold v. Campbell, 117 S. W. 463.

Art. 264a. Arrest of trespassers; may prohibit sale of liquor, etc.—The commanding officer upon any occasion of duty may place in arrest, during the continuance thereof, any person who shall trespass upon the camp ground, parade ground, armory or other place devoted to such duty, or shall in any way or manner interrupt or molest the orderly discharge of duty by those under arms, or shall disturb or prevent the passage of troops going to and returning from any duty. He may prohibit and prevent the sale or use of all spirituous liquors, wine, ale or beer, the holding of huckster or auction sales, and all gambling within the limit of the post, camp ground, place of encampment, parade or drill under his command, or within limits not exceeding one mile therefrom, as he may prescribe. And he may in his discretion abate as common nuisances all such sales. (Acts 1905, p. 183, ch. 104, sec. 73.)

The above provision was omitted from the revised C. C. P., and is inserted in this compilation in view of the decisions in Berry v. S., 156 S. W. 626; Stevens v. S., 159 S. W. 505; Robertson v. S., 159 S. W. 713.

CHAPTER TWO

OF ARREST UNDER WARRANT

Art. 265. (253) Definition of "warrant of arrest."—A "warrant of arrest" is a written order from a magistrate, directed to a peace officer or some other person specially named, commanding him to take the body of the person accused of an offense, to be dealt with according to law. (O. C. 215.)

Art. 266. (254) Is sufficient if it have, etc.—It issues in the name of "The State of Texas," and shall be deemed sufficient, without regard to form, if it have these substantial requisites:

1. It must specify the name of the person whose arrest is ordered, if it be known; if not known, then some reasonably definite description must be given of him.

2. It must state that the person is accused of some offense against the laws of the state, naming the offense.

3. It must be signed by the magistrate, and his office be named in the body of the warrant, or in connection with his signature. (O. C. 216.)

See post arts. 278, 975, 979; Fulkerson v. S., 67 S. W. 502; Ex parte Thomas, 108 S. W. 663; Sullivan v. S., 148 S. W. 1091.

Art. 267. (255) Magistrate may issue warrant of arrest, in what cases.—Magistrates may issue warrants of arrest in the following cases:

1. In all cases in which they are by law authorized to order verbally the arrest of an offender.

2. When any person shall make oath before such magistrate that another has committed some offense against the laws of the state.

3. In all cases named in this Code where they are specially authorized to issue such warrants. (O. C. 217, 218.)

See post art. 971.

Art. 268. (256) "Complaint" is what.—The affidavit made before the magistrate, which charges the commission of an offense, is called a complaint. (O. C. 219.)

Art. 269. (257) Requisites of complaint.—The complaint shall be deemed sufficient, without regard to form, if it have these substantial requisites:

1. It must state the name of the accused, if known, and if not known, must give some reasonably definite description of him.

2. It must state that the accused has committed some offense against the laws of the state, naming the offense, or that the affiant has good reason to believe, and does believe, that the accused has committed such offense.

3. It must state the time and place of the commission of the offense, as definitely as can be done by the affiant.

4. It must be in writing, and signed by the affiant, if he is able to write his name; otherwise he must place his mark at the foot of the complaint. (O. C. 220.)

See post arts. 479, 972, 973; Scott v. S., 56 S. W. 61; Taylor v. S., 72 S. W. 181; Lewis v. S., 97 S. W. 481; Fricks v. S., 124 S. W. 922; Green v. S., 136 S. W. 467; Gentry v. S., 137 S. W. 696; Wright v. S., 140 S. W. 1105; Mistrot v. S., 162 S. W. 833; Adams v. S., 192 S. W. 1067.

Art. 270. (258) Warrant issued by magistrates, etc., extends to every part of the estate.—That a warrant of arrest, issued by any county or district clerk, or by any magistrate (except county commissioners or commissioners' courts, mayors or recorders of an incorporated city or town), shall extend to any part of the state; and any peace officer to whom said warrant is directed, or into whose hands the same has been transferred, shall be authorized to execute the same in any county in this state. (O. C. 221; amended, Acts 1905, p. 385.)

Art. 271. (259) Warrant issued by other magistrate does not extend, etc., except, etc.—When a warrant of arrest is issued by any county commissioner or commissioners' court, mayor or recorder of an incorporated city or town, it can not be executed in another county than the one in which it issues, except:

1. It be indorsed by a judge of a court of record, in which case it may be executed anywhere in the state, or

2. If it be indorsed by any magistrate in the county in which the accused is found, it may be executed in such county. The indorsement may be: "Let this warrant be executed in the county of ———." Or, if the indorsement is made by a judge of a court of record, then the indorsement may be: "Let this warrant be executed in any county of the state of Texas." Any other words expressing the same meaning will be sufficient. The indorsement shall be dated, and signed officially by the magistrate making it. (O. C. 222; amended, Acts 1905, p. 385.)

See Ex parte Sykes, 79 S. W. 538; Sneed v. McFatridge, 97 S. W. 113.

Art. 272. (260) Warrant of arrest may be forwarded by telegraph, etc.—A warrant of arrest may be forwarded by telegraph from any telegraph office to another in this state. If it be issued by any magistrate named in article 270, the peace officer receiving the same shall execute it without delay. If it be issued by any other magistrate than is named in article 270, the peace officer receiving the same shall forthwith proceed with it to the nearest magistrate of his county, who shall indorse thereon, in substance, these words: "Let this warrant be executed in the county of ———," which indorsement shall be dated and signed officially by the magistrate making the same. (Acts 1871, p. 39.)

See Ex parte Sykes, 79 S. W. 538.

Art. 273. (261) Complaint by telegraph, and proceedings thereon.—A complaint in writing, in accordance with article 257, may be telegraphed, as provided in the preceding article, to any magistrate in the state; and the magistrate who receives the same shall forthwith issue a warrant for the arrest of the accused; and the accused, when arrested, shall be dealt with as provided in this chapter in similar cases. (Acts 1871, p. 39.)

Art. 274. (262) Certified copy of warrant or complaint to be deposited with telegraph manager, etc.—A certified copy of the original warrant or complaint, certified to by the magistrate issuing or taking the same, shall be deposited with the manager of the telegraph office from which the same is to be forwarded; and it shall be at once forwarded, taking precedence over other business to the place of its destination or to the telegraph office nearest thereto, precisely as it is written, including the certificate of the seal attached. (Id.)

Art. 275. (263) Duty of telegraph manager at the office of delivery.—When a warrant or complaint is received at a telegraph office for delivery, it shall be delivered to the party to whom it is addressed as soon as practicable, written on the proper blanks of the telegraph company, and certified to by the manager of the telegraph office as being

a true and correct copy of the warrant or complaint received at his office. (Id.)

Art. 276. (264) Warrant or complaint must be under official seal, etc.—No manager of a telegraph office shall receive and forward a warrant or complaint, as herein provided, unless the same shall be certified to under the seal of a court of record or by a justice of the peace, with the certificate under seal of the clerk of the district or county court of his county, that he is a legally qualified justice of the peace of such county; nor shall it be lawful for any magistrate to indorse a warrant received by telegraph, or issue a warrant upon a complaint received by telegraph, unless all the requirements of the law in relation thereto have been fully complied with. (Id.)

Art. 277. (265) Telegram to be prepaid, unless, etc.—The party presenting a warrant or complaint to the manager of a telegraph office, to be forwarded by telegraph, shall pay for the same in advance, unless, by the rules of the company, it may be sent "collect." (Id.)

Art. 278. (266) Warrant may be directed to any suitable person, when.—In cases where it is made known by satisfactory proof to the magistrate that a peace officer can not be procured to execute a warrant of arrest, or that so much delay will be occasioned in procuring the services of a peace officer that a person accused will probably escape, the warrant of arrest may be directed to any suitable person who is willing to execute the same; and, in such case, his name shall be set forth in the warrant. (O. C. 223.)

See Messer v. S., 40 S. W. 488; Jenkins v. S., 82 S. W. 1036.

Art. 279. (267) Can not be compelled to execute warrant, etc.; has same right as peace officer.—No person other than a peace officer can be compelled to execute a warrant of arrest; but, if any person shall undertake the execution of the warrant, he shall be bound to do so under all the penalties to which a peace officer would be liable. He has the same rights, and is governed by the same rules as are prescribed to peace officers. (O. C. 224.)

See post art. 287.

Art. 280. (268) How warrant is executed, etc.—The officer or person executing a warrant of arrest, shall take the person whom he is directed to arrest forthwith before the magistrate who issued the warrant, or before the magistrate named in the warrant. (O. C. 225.)

See post arts. 336, 341.

Art. 281. (269) Arrest in one county for felony committed in another.—If any person be arrested in one county for felony committed in another, he shall, in all cases, be taken before some magistrate of the county where it was alleged the offense was committed. (O. C. 226.)

Art. 282. (270) Arrest in one county for misdemeanor committed in another.—If the arrest be for a misdemeanor, he shall be taken before a magistrate of the county where the arrest takes place, who shall be authorized to take bail, and whose duty it shall be to transmit immediately the bond so taken to the court having jurisdiction of the offense. (O. C. 226.)

Art. 283. (271) (250) Proceedings when party arrested for misdemeanor, etc., fails to give bail.—If the accused fails or refuses to give bail, as provided in the preceding article, he shall be committed to the jail of the county where he was arrested; and the magistrate committing him shall forthwith notify the sheriff of the county in which the offense is alleged to have been committed of the arrest and commitment, which notice may be given by telegraph, by mail or by other written notice.

Art. 284. (272) (251) Duty of sheriff receiving notice, etc.—It shall be the duty of the sheriff receiving the notice provided for in the preceding article, forthwith to go or send for the prisoner, and have him brought before the proper court or magistrate.

Art. 285. (273) (252) Prisoner shall be discharged if not demanded in thirty days.—Should the sheriff or other proper officer of the county where the offense is alleged to have been committed not demand the prisoner and take charge of him within thirty days from the day he is committed, such prisoner shall be discharged from custody.

Art. 286. (274) A person is said to be arrested, when.—A person is said to be arrested when he has been actually placed under restraint or taken into custody by the officer or person executing the warrant of arrest. (O. C. 227.)

Art. 287. (275) An arrest may be made, when.—An arrest may be made on any day, or at any time of the day or night. (O. C. 228.)

Art. 288. (276) What force may be used.—In making an arrest, all reasonable means are permitted to be used to effect it. No greater force, however, shall be resorted to than is necessary to secure the arrest and detention of the accused. (O. C. 229.)

See P. C. arts. 42, 1092, 1100.

Art. 289. (277) In case of felony, may break door.—In case of felony, the officer may break down the door of any house for the purpose of effecting an arrest, if he be refused admittance, after giving notice of his authority and purpose. (O. C. 230.)

Art. 290. (278) Authority to arrest must be made known.—In executing a warrant of arrest, it shall always be made known to the person accused under what authority the arrest is made; and, if requested, the warrant shall be exhibited to him. (O. C. 231.)

See Montgomery v. S., 65 S. W. 537.

Art. 291. (279) Prisoner escaping, etc., may be retaken without warrant.—If a person arrested shall escape, or be rescued, he may be retaken without any other warrant; and, for this purpose, all the means may be used which are authorized in making the arrest in the first instance. (O. C. 232.)

Art. 291a. Members of militia exempt from arrest, when.—No persons belonging to the active militia of this state shall be arrested on any civil process while going on duty to or returning from any place at which he may be required to attend for military duty, except in cases of treason, felony, or

breach of the peace. (Acts 1905, p. 183, ch. 104, sec. 70.)

The above provision was omitted from the revised Code of Criminal Procedure, and is inserted in this compilation in view of the decision in Berry v. S., 156 S. W. 626.

CHAPTER THREE

OF THE COMMITMENT OR DISCHARGE OF THE ACCUSED

Art. 292. (280) Proceeding when brought before a magistrate.—When a person accused of an offense has been brought before a magistrate, that officer shall proceed to examine into the truth of the accusation made, allowing the accused, however, sufficient time to procure the aid of counsel. (O. C. 233.)

Art. 293. (281) When examination postponed for reasonable time; custody and disposition of the accused during that time.—The magistrate may, at the request of the prosecutor or person representing the state, or of the defendant, postpone, for a reasonable time, the examination, so as to afford an opportunity to procure testimony; but the accused shall in the meanwhile be detained in the custody of the sheriff or other duly authorized officer, unless he give bail to be present from day to day before the magistrate until the examination is concluded, which he may do in all cases except murder and treason. (O. C. 234.)

Art. 294. (282) Defendant shall be informed of his right to make statement, etc.—Before the examination of the witnesses, the magistrate shall inform the defendant that it is his right to make a statement relative to the accusation brought against him, but shall, at the same time, also inform him that he can not be compelled to make any statement whatever, and, that if he does make such statement, it may be used in evidence against him. (O. C. 235–241.)

See post art. 810; Aiken v. S., 64 S. W. 57; Biard v. S., 113 S. W. 275; Rios v. S., 183 S. W. 151; Fleming v. S., 194 S. W. 159.

Art. 295. (283) Voluntary statement of accused.—If the accused shall desire to make a voluntary statement, he may do so before the examination of any of the witnesses, but not afterward. His statement shall be reduced to writing by the magistrate, or by some one under his direction, or by the accused or his counsel, and shall be signed by the accused, but shall not be sworn to by him. If the accused be unable to write his name, he shall sign the statement by making his mark at the foot of the same; and the magistrate shall, in every case, attest by his own certificate and signature to the execution and signing of the statement. (O. C. 235, 242, 243.)

See post art. 810; Aiken v. S., 64 S. W. 57; Biard v. S., 113 S. W. 275; Rios v. S., 183 S. W. 151.

Art. 296. (284) Witness may be placed under rule.—The magistrate shall, if requested by the accused or his counsel, or by the person prosecuting, have all the witnesses placed in charge of an officer, except the witness who is testifying, so that the testimony given by any one witness shall not be heard by any of the others. (O. C. 235.)

See post arts. 719, 723.

Art. 297. (285) Right of counsel to examine witness.—If any person appear to prosecute as counsel for the state, he shall have the right to put the questions to the witnesses on the direct or cross-examination; and the accused or his counsel has the same right. Should no counsel appear, either for the state or for the defendant, the magistrate may examine the witnesses; and the accused has the same right. (O. C. 236.)

Art. 298. (286) (265) Same rules of evidence govern as on final trial.—The same rules of evidence shall apply to and govern a trial before an examining court that apply to and govern a final trial.

Art. 299. (287) Witnesses shall be examined in presence of the accused.—The examination of each witness shall be in the presence of the accused. (O. C. 240.)

Art. 300. (288) Testimony shall be reduced to writing, signed and certified.—The testimony of each witness examined shall be reduced to writing by the magistrate, or some one under his direction, and shall then be read over to the witness, or he may read it over himself; and such corrections shall be made in the same as the witness may direct; and he shall then sign the same by affixing thereto his name or mark. All the testimony thus taken shall be certified to by the magistrate taking the same. (O. C. 238.)

See post ch. 8, title 8.

Art. 301. (289) Magistrate may issue attachment for witnesses.—The magistrate has the power in all cases, where a witness resides or is in the county where the prosecution is pending, to issue an attachment for the purpose of enforcing the attendance of such witness; this he may do without having previously issued a subpœna for that purpose. (O. C. 244.)

This article and arts. 303 and 304, post, seem to be superseded by Acts 1897, 1 S. S., p. 58 (arts. 539-545, post).

Art. 302. (290) May issue attachment to another county, when.—The magistrate may issue an attachment for a witness to any county in the state, when affidavit is made by the party applying therefor that the testimony of the witness is material to the prosecution, or the defense, as the case may be; and the affidavit shall further state the facts which it is expected will be proved by the witness; and, if the facts set forth are not considered material by the magistrate, or, if they be admitted to be true by the adverse party, the attachment shall not issue. (O. C. 246.)

Art. 303. (291) Witness need not be tendered fees, etc.—It shall not be necessary where a witness is attached to tender his witness fees or expenses to him. (O. C. 246.)

Art. 304. (292) Attachment shall be executed forthwith.—The officer receiving the attachment shall execute it forthwith by bringing before the magistrate the witness named therein, unless such witness shall give bail for his appearance before the magistrate at the time and place required by the writ. (O. C. 245.)

Art. 305. (293) Manner of postponing examination to procure testimony.—After examining the witnesses in attendance, if it satisfactorily appear to the magistrate that

there is other important testimony which may be had by a postponement of the examination, he shall, at the request of the prosecutor or of the defendant, postpone the further examination for a reasonable time to enable such testimony to be procured; but in such case the accused shall remain in the custody of the proper officer until the day fixed for such further examination. No postponement shall take place, unless a statement, on oath, be made by the defendant, or the person prosecuting, setting forth the name and residence of the witness, and the facts which it is expected will be proved; or, if it be testimony other than that of a witness, the statement made shall set forth the nature of the evidence. If the magistrate is satisfied that the testimony is not material, or, if the same be admitted to be true by the adverse party, the postponement shall be refused. (O. C. 239.)

Art. 306. (294) Capital offense; who may discharge.—Upon examination of a person accused of a capital offense, no magistrate other than a judge of the supreme court, a judge of a court of appeals, a judge of the district court or a judge of the county court, shall have power to discharge the defendant. Any magistrate may admit to bail, except in capital cases, where the proof is evident. (O. C. 248.)

Art. 307. (295) Proceedings when insufficient bail has been taken.—Where it is made to appear by complaint, on oath, to a judge of the supreme court, court of appeals, district or county court, that the bail taken in any case is insufficient in amount, or that the sureties are not good for the amount, or that the bond is for any reason defective or insufficient, such judge shall issue a warrant of arrest, and require of the defendant sufficient bond and security, according to the nature of the case. (O. C. 249.)

See Jenkins v. S., 77 S. W. 224; Ex parte Wasson, 97 S. W. 103.

Art. 308. (296) When committed, discharged, or admitted to bail.—After the voluntary statement of the accused, if any, and the examination of the witnesses has been fully completed, the magistrate shall proceed to make an order committing the defendant to the jail of the proper county, if there be one, discharging him or admitting him to bail, as the law and facts of the case may require. (O. C. 250.)

See post arts. 341, 342, 344; Butler v. S., 38 S. W. 46; Rogers v. Mullen, 63 S. W. 897.

Art. 309. (297) When no safe jail, etc.—Where there is no safe jail in the county in which the prosecution is carried on, the magistrate may commit to the nearest safe jail in any other county. (O. C. 251.)

Art. 310. (298) To whom warrant is directed in such case.—The warrant of commitment in the case mentioned in the preceding article shall be directed to the sheriff of the county to which the defendant is sent, but the sheriff of the county from which the defendant is taken shall be required to deliver the prisoner into the hands of the sheriff of the county to which he is sent. (O. C. 252.)

Art. 311. (299) Warrant of commitment; its requisites.—A warrant of commitment is an order signed by the proper magistrate directing a sheriff to receive and place in jail the person so committed. It will be sufficient if it have the following requisites:

1. That it run in the name of "The State of Texas."
2. That it be addressed to the sheriff of the county to the jail of which the defendant is committed.
3. That it state in plain language the offense for which the defendant is committed, and give his name, if it be known, or, if unknown, contain an accurate description of the defendant.
4. That it state to what court and at what time the defendant is to be held to answer.
5. When the prisoner is sent out of the county where the prosecution arose, the warrant shall state that there is no safe jail in the proper county.
6. If it be a case in which bail has been granted, the amount of bail shall be stated in the warrant. (O. C. 253.)

Art. 312. (300) When prisoner sent to jail of another county, etc.—In every case where, for want of a safe jail in the proper county, a prisoner is committed to the jail of another county, the last named county shall have the right to recover by civil action, in a court of competent jurisdiction, of the county from which the prisoner was sent, an amount of money not exceeding seventy-five cents per day, on account of the expenses attending the custody and safe keeping of a prisoner. (O. C. 254.)

See post arts. 1150, 1151.

Art. 313. (301) Duty of sheriff in reference to prisoners.—It is the duty of every sheriff to keep safely a person committed to his custody. He shall use no cruel or unusual means to secure this end, but shall adopt all necessary measures to prevent the escape of a prisoner. He may summon a guard of sufficient number, in case it becomes necessary to prevent an escape from jail, or the rescue of a prisoner. (O. C. 255.)

See ante arts. 49-53.

Art. 314. (302) Discharge shall not prevent, etc.—A discharge by a magistrate, upon an examination of any person accused of an offense, shall not prevent a second arrest of the same person for the same offense. (O. C. 256.)

CHAPTER FOUR

OF BAIL

1. GENERAL RULES APPLICABLE TO ALL CASES OF BAIL

Art. 315. (303) Definition of "bail."—"Bail" is the security given by a person accused of an offense that he will appear and answer before the proper court the accusation brought against him. This security is given by means of a recognizance or a bail bond. (O. C. 257, 258.)

See ante art. 6; Fossett v. S., 67 S. W. 322.

Art. 316. (304) Definition of "recognizance."—A "recognizance" is an undertaking entered into, before a court of record in session, by the defendant in a criminal action, and his sureties, by which they bind themselves, respectively, in a sum fixed by the court, that the defendant will appear for trial before such court upon the accusation preferred against him. The undertaking of the parties in such case is not signed, but is

made a matter of record in the court where the same is entered into. (O. C. 259.)

See post arts. 320, 919.

Art. 317. (305) Definition of "bail bond."—A "bail bond" is an undertaking entered into by the defendant and his sureties for the appearance of the principal therein before some court or magistrate to answer a criminal accusation; it is written out and signed by the defendant and his sureties. (O. C. 260.)

See post art. 321; Williams v. S., 103 S. W. 929.

Art. 318. (306) When a bail bond is given.—A bail bond is entered into either before a magistrate, upon an examination of a criminal accusation against a defendant, or before a judge upon an application under habeas corpus; or it is taken from the defendant by a peace officer who has a warrant of arrest or commitment, as hereafter provided. (O. C. 261.)

Art. 319. (307) What the word "bail" includes.—Wherever the word "bail" is used with reference to the security given by the defendant, it is intended to apply as well to recognizances as to bail bonds. When a defendant is said to be "on bail," or to have "given bail," it is intended to apply as well to recognizances as to bail bonds. (O. C. 262.)

2. RECOGNIZANCE AND BAIL BOND

Art. 320. (308) Requisites of a recognizance.—A recognizance shall be sufficient to bind the principal and sureties if it contain the following requisites:

1. If it be acknowledged that the defendant is indebted to the state of Texas in such sum as is fixed by the court, and the sureties are, in like manner, indebted in such sum as is fixed by the court.

2. If the defendant is charged with an offense that is a felony, that it state that he is charged with a felony. If the defendant is charged with a misdemeanor, that it state that he is charged with a misdemeanor.

3. That the time and place when the defendant is bound to appear be stated, and the court before which he is bound to appear. (O. C. 263; amended, Acts 1899, p. 111.)

See post art. 919; Foster v. S., 42 S. W. 998; Mara v. S., 45 S. W. 594; Clark v. S., 56 S. W. 623; Nichols v. S., 83 S. W. 1113; Williams v. S., 103 S. W. 929.

Art. 321. (309) Requisites of a bail bond.—A bail bond shall be sufficient if it contain the following requisites:

1. That it be made payable to the state of Texas.

2. That the obligors thereto bind themselves that the defendant will appear before the proper court or magistrate to answer the accusation against him.

3. If the defendant is charged with an offense that is a felony, that it state that he is charged with a felony. If the defendant is charged with a misdemeanor, that it state that he is charged with a misdemeanor.

4. That the bond be signed by the principal and sureties, or in case all or either of them can not write, then that they affix thereto their marks.

5. That the bond state the time and place, when and where the accused binds himself to appear, and the court or magistrate before whom he is to appear. In stating the time, it is sufficient to specify the term of the court; and in stating the place, it is sufficient to specify the name of the court or magistrate, and of the county. (O. C. 264; amended, Acts 1899, p. 111.)

See Johnson v. S., 40 S. W. 982; Polly v. S., 40 S. W. 283; Camp v. S., 45 S. W. 491; Wisdom v. S., 86 S. W. 756; Granberry v. S., 116 S. W. 594; Callaghan v. S., 122 S. W. 879; Barrett v. S., 151 S. W. 558; Holley v. S., 157 S. W. 937; Hodges v. S., 165 S. W. 607; Anderson v. S., 201 S. W. 994.

Art. 322. (310) Rules laid down in this chapter applicable to all cases where bail is taken.—The rules laid down in this chapter respecting recognizances and bail bonds are applicable to all such undertakings when entered into in the course of a criminal action, whether before or after an indictment or information, in every case where authority is given to any court, judge, magistrate or other officer, to require bail of a person accused of an offense, or of a witness in a criminal action. (O. C. 265.)

See Fossett v. S., 67 S. W. 322; Talley v. S., 69 S. W. 514; Ex parte Cobb, 154 S. W. 997.

Art. 323. (311) Bail bond and recognizance.—A recognizance or bail bond, entered into by a defendant, and which binds him to appear at a particular term of the district court, shall be construed to bind him and his sureties for his attendance upon the court from term to term, and from day to day, until discharged from further liability thereon, according to law. (O. C. 267.)

Art. 324. (312) Minor or married woman can not be security.—A minor or married woman can not be surety on a recognizance or bail bond, but, if either of these classes of persons be the accused party, the undertaking shall be binding both upon principal and surety. (O. C. 268.)

See Speer's Marital Rights, pp. 232, 337.

Art. 325. (313) In what manner bail shall be taken.—It is the duty of every court, judge, magistrate or other officer taking bail, to require evidence of the sufficiency of the security offered; but, in every case, one surety shall be sufficient, if it be made to appear that such surety is worth at least double the amount of the sum for which he is bound, exclusive of all property exempted by law from execution, and of debts or other incumbrances; that he is a resident of this state, and has property therein liable to execution worth the sum for which he is bound. (O. C. 269.)

See Pierce v. S., 45 S. W. 1019.

Art. 326. (314) Property exempt from sale shall not be liable for, etc.—The property secured by the constitution and laws from forced sale shall not, in any case, be held liable for the satisfaction of a recognizance or bail bond, either as to the principal or sureties. (O. C. 270.)

Art. 327. (315) How sufficiency of sureties shall be ascertained.—In order to test the sufficiency of the security offered to any recognizance or bail bond, unless the court or officer taking the same is fully satisfied as to the sufficiency of the security, the following oath shall be made in writing and subscribed by the surety: "I, A. B, do swear (or affirm, as the case may be) that I am worth, in my own right, at least the sum of [here insert the amount in which the surety is bound], after deducting from my property all that which is exempt by the consti-

tution and laws of the state from forced sale, and after the payment of all my debts of every description, whether individual or security debts, and after satisfying all incumbrances upon my property which are known to me; that I reside in ———— county, and have property in this state liable to execution worth [amount for which he offers to be bound] or more."

[Signed by the surety.]

[Dated ————, and attest by the judge of the court, clerk, magistrate or sheriff.]

Which affidavit shall be filed with the papers of the cause, or criminal proceedings. (O. C. 271.)

Art. 328. (316) (295) Affidavit not conclusive, but further evidence required, when.—The affidavit provided for in the preceding article shall not be deemed conclusive as to the sufficiency of the security; and, if the court or officer taking the recognizance or bail bond is not fully satisfied as to the sufficiency of the security offered, further evidence shall be required before approving the same.

Art. 329. (317) Rules for fixing amount of bail.—The amount of bail to be required in any case is to be regulated by the court, judge, magistrate or officer taking the bail; they are to be governed in the exercise of this discretion by the constitution of this state, and by the following rules:

1. The bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with.

2. The power to require bail is not to be used in such manner as to make it an instrument of oppression.

3. The nature of the offense and the circumstances under which it was committed are to be considered.

4. The pecuniary circumstances of the accused are to be regarded, and proof may be taken upon this point. (O. C. 272.)

3. SURRENDER OF THE PRINCIPAL BY HIS BAIL

Art. 330. (318) Surety may surrender his principal, when.—Those who have become bail for the accused, or either of them, may at any time relieve themselves of their undertaking by surrendering the accused into the custody of the sheriff of the county where he is prosecuted. (O. C. 273.)

See Talley v. S., 69 S. W. 514; Smith v. S., 85 S. W. 1078; Woodring v. S., 108 S. W. 371; Ex parte Cobb, 154 S. W. 997.

Art. 331. (319) When surrender is made during term of court.—Should a surrender of the accused be made during a term of the court to which he has bound himself to appear, the sheriff shall take him before the court; and, if he is willing to give other bail, the court shall forthwith require him to do so, as in other cases. (O. C. 274.)

See ex parte Wasson, 97 S. W. 103.

Art. 332. (320) When court is not in session.—If the surrender be made while the court is not in session, the sheriff may take himself the necessary bail bond. (O. C. 275.)

See Whitner v. S., 41 S. W. 595.

Art. 333. (321) Surety may obtain a warrant of arrest for principal, when.—Any surety, desiring to surrender his principal, may, upon making a written affidavit of such intention before the court or magistrate before which the prosecution is pending, obtain from such court or magistrate a warrant of arrest for such principal, which shall be executed as in other cases. (O. C. 274.)

Art. 334. (322) Proceedings when surrender is in term time and accused fails to give bond.—If the accused fails or refuses to give bail in case of a surrender during a term of court, the court shall make an order that he be committed to jail until the bail be given; and this shall be a sufficient commitment without any written order or warrant to the sheriff. (O. C. 275.)

See Whitner v. S., 41 S. W. 595.

Art. 335. (323) When surrender is made in vacation and accused fails, etc.—When the surrender is made at any other time than during the session of the court, and the defendant fails or refuses to give other bail, the sheriff shall take him before the nearest magistrate; and such magistrate shall issue a warrant of commitment, reciting the fact that the accused has been once admitted to bail, has been surrendered, and now fails or refuses to give other bail. (O. C. 276.)

Art. 336. (324) Sheriff, etc., may take bail bond, when.—The sheriff, or other peace officer, in cases of misdemeanor, has authority at all times, whether during the term of the court or in vacation, where he has a defendant in custody under a warrant of commitment, warrant of arrest, or capias, or where the accused has been surrendered by his bail, to take of the defendant a bail bond. (O. C. 279.)

See Talley v. S., 69 S. W. 514; Russey v. Wilson, 202 S. W. 974.

Art. 337. (325) Sheriff, etc., not authorized to take bail in felony case when court is in session.—In cases of felony, when the accused is in custody of the sheriff or other peace officer, and the court before which the prosecution is pending is in session in the county where the accused is in custody, the court shall fix the amount of bail, if it is a bailable case; and the sheriff, or other peace officer, unless it be the police of a city, is authorized to take a bail bond of the accused, if executed with good and sufficient sureties, in the amount as fixed by the court, to be approved by such officer taking the same, and will thereupon discharge the accused from custody; and it shall not be necessary for the defendant or his sureties to appear in court, but such bail bond may be taken as if court was not in session, except for the fixing of the amount of bail as aforesaid. (O. C. 280; amended, Acts 1907, p. 148.)

Art. 338. (326) May take bail in felony cases, when.—In a felony case, if the court before which the same is pending is not in session in the county where the defendant is in custody, the sheriff, or other peace officer having him in custody, may take his bail bond in such amount as may have been fixed by the court or magistrate, or, if no amount has been fixed, then in such amount as such sheriff or other peace officer may consider reasonable. (O. C. 281.)

Art. 339. (327) Sureties are severally bound, etc.—In all recognizances, bail bonds or other bonds, taken under the provisions of this Code, the sureties shall be severally bound; and, where a surrender of the principal is made by one or more of them, all

the sureties shall be considered discharged, and the principal shall be required to give new bail, as in the first instance. (O. C. 281–283.)

See Talley v. S., 69 S. W. 514.

4. BAIL BEFORE THE EXAMINING COURT

Art. 340. (328) Rules in relation to bail, and of a general nature, applicable in this court.—The rules laid down in the preceding articles of this chapter, relating to the amount of the bail, the number of sureties, the person who may be surety, the property which is exempt from liability, the form of bail bonds, the responsibility of parties to the same, and all other rules in this chapter of a general nature, are applicable to bail taken before an examining court. (O. C. 284.)

See Ex parte Hays, 64 S. W. 1048.

Art. 341. (329) Proceedings when bail is granted.—After a full examination of the testimony, the magistrate shall, if the case be one where bail may properly be granted and ought to be required, proceed to make an order that the accused execute a bail bond with sufficient security, conditioned for his appearance before the proper court. (O. C. 285.)

See ante art. 308; Ex parte Hays, 64 S. W. 1049.

Art. 342. (330) When bail can not be allowed, and when it shall be allowed.—In capital cases, where the guilt of the accused is evident, bail can not be allowed. In all other cases, the accused is entitled to bail as a matter of right. (O. C. 286, 287.)

See ante art. 6.

Art. 343. (331) Reasonable time given to procure bail.—Reasonable time shall be given the accused to procure security. (O. C. 289.)

Art. 344. (332) When bail is not given, magistrate shall commit accused, etc.—If, after the allowance of a reasonable time, the security be not given, the magistrate shall make an order committing the accused to jail to be kept safely until legally discharged; and he shall issue a warrant of commitment accordingly. (O. C. 290.)

See ante art. 308.

Art. 345. (333) When accused is ready to give bail, a bond shall be prepared, etc.—If the party be ready to give bail, the magistrate shall prepare, or cause to be prepared, a bail bond, which shall be signed by the accused and his surety or sureties, the magistrate first being satisfied as to the sufficiency of the security. (O. C. 291.)

Art. 346. (334) Accused shall be liberated upon giving bond.—In all cases when the accused has given the required bond, either to the magistrate, or the officer having him in custody, he shall at once be set at liberty. (O. C. 293, 294.)

Art. 347. (335) Magistrate shall certify proceedings to proper court.—The magistrate, before whom an examination has taken place upon a criminal accusation, shall certify to all the proceedings had before him, and transmit them, sealed up, to the court, before which the defendant is subject to be tried upon indictment or information, writing his name across the seals of the envelope containing the proceedings. The voluntary statement of the defendant, the testimony of the witnesses, bail bonds of the defendant and of witnesses, and all and every other proceeding in the case, shall be thus delivered to the clerk of the proper court, without delay. (O. C. 295.)

See Ex parte Hays, 64 S. W. 1049; Butler v. S., 38 S. W. 46.

Art. 348. (336) (315) Duty of clerks who receive such proceedings.—If the proceedings be delivered to a clerk of the district court, he shall keep the same safely, and deliver the same to the foreman of the next grand jury, as soon as said grand jury is organized. If the proceedings are delivered to a clerk of the county court, he shall keep the same safely, and, without delay, deliver them to the district or county attorney of his county.

Art. 349. (337) Duty of magistrate in all cases to certify and deliver proceedings.—It is the duty of a magistrate, as well where a party has been discharged as where he has been held to bail or committed, to certify and deliver the proceedings in the case, as provided in article 347; and he shall likewise, when a complaint has been made to him of the commission of an offense, and there has been a failure from any cause to arrest the accused, file with the proper clerk the complaint and warrant of arrest, together with a list of the witnesses and their residences, if known. (O. C. 296.)

Art. 350. (338) (317) Accused may waive an examination; proceedings in such case.—In all bailable cases before an examining court, the accused may waive a trial of the accusation, and consent for the magistrate to require bail of him; but, in such case, the prosecutor or magistrate may cause the witnesses for the state to be examined as in other cases; and the magistrate shall transmit, with the other proceedings in the case, to the clerk of the proper court, a list of the witnesses for the state, whether examined or not, and their residence, if known.

See Porch v. S., 99 S. W. 1122.

5. BAIL BY WITNESSES

Art. 351. (339) Witnesses required to give bond, when.—Witnesses on behalf of the state or defendant may be required by the magistrate, upon the examination of any criminal accusation before him, to give bail for their appearance to testify before the proper court; and, if a witness make oath that he is unable to give security or deposit a sufficient amount of money in lieu thereof, then his individual bond shall be taken. (O. C. 297.)

Art. 352. (340) Of amount of security required of a witness.—The amount of security to be required of a witness is to be regulated by his pecuniary condition, and the nature of the offense, with respect to which he is a witness. (O. C. 298.)

Art. 353. (341) Force and effect of witnesses' bonds.—The bonds given by witnesses for their appearance shall have the same force and effect of bail bonds, and may be forfeited and recovered upon in the same manner. (O. C. 299.)

Art. 354. (342) (321) Witness who fails, etc., to give bond when required may be committed.—When a witness who has been required to give bail, fails or refuses to do so, and fails or refuses to make the

affidavit provided for in article 351, he shall be committed to jail as in other cases of a failure or refusal to give bail when required; but he shall be released from custody, upon giving such bail, or upon making the affidavit provided for in article 351, and giving his individual bond.

TITLE 6

SEARCH WARRANTS

CHAPTER ONE

GENERAL RULES

Art. 355. (343) Definition of "search warrant."—A "search warrant" is a written order, issued by a magistrate, and directed to a peace officer, commanding him to search for personal property, and to seize the same, and bring it before such magistrate; or it is a like written order, commanding a peace officer to search a suspected place where it is alleged stolen property is commonly concealed, or implements kept for the purpose of being used in the commission of any designated offense. (O. C. 300.)

Art. 356. (344) For what purposes it may be issued.—A search warrant may be issued for the following purposes, and no others:

1. To discover property acquired by theft, or in any other manner which makes its acquisition a penal offense.

2. To search suspected places where it is alleged property so illegally acquired is commonly kept or concealed.

3. To search places where it is alleged implements are kept for the purpose of being used in forging or counterfeiting.

4. To search places where it is alleged arms or munitions are kept or prepared for the purpose of insurrection or riot.

5. To seize and bring before a magistrate any such property, implements, arms and munitions. (O. C. 301.)

See Penal Code, art. 601.

6. Any place, room or building in any county, justice precinct, town, city or such subdivision of the county, as may be designated by the commissioners court of said county, in which the sale of intoxicating liquor has been prohibited under the laws of this state, kept, maintained or used for the purpose of selling intoxicating liquor in violation of law, and any intoxicating liquor kept or possessed for such purpose, whether kept or possessed in any such place, room or building or elsewhere, and any signs, screens, bars, bottles, glasses and any other furniture, tools, appliances or other articles or things used as aids in keeping and maintaining any such place, room or building or any such liquor, are each and all hereby declared to be a common nuisance, and subject to search warrant. (O. C. 301; add. S. S. 1910, p. 27.)

Art. 357. (345) Its object.—A warrant to search for and seize stolen property is designed as a means of obtaining possession of the property for the purpose of restoring it to the true owner, and detecting any person guilty of the theft or concealment of the same. (O. C. 302.)

Art. 358. (346) Definition of word "stolen."—The word "stolen," as used in this title, is intended to embrace also the acquisition of property by any means forbidden and made penal by the law of the state. (Revision, 1879.)

Art. 359. (347) When asked for in reference to property not stolen.—When it is alleged that the property, to search for which a warrant is asked, was acquired in any other manner than by theft, the particular manner of its acquisition must be set forth in the complaint and in the warrant. (O. C. 304.)

Art. 360. (348) These rules applicable to all cases.—The mode of proceeding, directed to be pursued in applying for a warrant to search for and seize stolen property, and the rules prescribed for officers in issuing such warrants and executing the same, the disposition of the property seized, and all other rules herein prescribed on the subject, shall apply and be pursued, when the property to be searched for was acquired, in any manner, in violation of the provisions of the Penal Code. (Revision, 1879.)

CHAPTER TWO

WHEN AND HOW A SEARCH WARRANT MAY BE ISSUED

Art. 361. (349) Contents of application for a search warrant.—A warrant to search for and seize property alleged to have been stolen and concealed at a particular place may be issued by a magistrate, whenever complaint in writing and on oath is made to such magistrate, setting forth—

1. The name of the person accused of having stolen or concealed the property; or, if his name be unknown, giving a description of the accused, or stating that the person who stole or concealed the property is unknown.

2. The kind of property, and its probable value, alleged to be stolen or concealed.

3. The place where the property is alleged to be concealed.

4. The time, as near as may be, when the property is alleged to have been stolen. (O. C. 307.)

Art. 362. (350) Contents of application for warrant to discover and seize.—A warrant to discover and seize property alleged to have been stolen, or otherwise acquired in violation of the penal law, but not alleged to be concealed at any particular place, may be issued whenever complaint is made in writing and on oath, setting forth—

1. The name of the person suspected of being the thief, or an accurate description of him, if his name be unknown, or that the thief is unknown.

2. An accurate description of the property, and its probable value.

3. The time, as near as may be, when the property is supposed to have been stolen.

4. That the person complaining has good ground to believe that the property was stolen by the person alleged to be the thief. (O. C. 306.)

Art. 363. (351) Contents of application for warrant to search suspected place.—A warrant to search any place suspected to be one where stolen goods are commonly concealed or where implements are kept for the purpose of aiding in the commis-

sion of offenses may be issued by a magistrate, when complaint is made in writing and on oath, setting forth—

1. A description of the place suspected.

2. A description of the kind of property alleged to be commonly concealed at such place, or the kind of implements kept.

3. The name, if known, of the person supposed to have charge of such place, when it is alleged that it is under the charge of any one.

4. When it is alleged that implements are kept at a place for the purpose of aiding in the commission of offenses, the particular offense for which such implements are designed must be set forth; and, upon affidavit being made by any credible person of the county where the proceeding is begun, before the county judge or a justice of the peace of said county, describing the place, room or building, as near as may be, where it is believed by the affiant that intoxicating liquor is being sold in violation of law, or is being kept or possessed for the purpose of being sold in violation of law, or shall name or describe, if the name is unknown, any person who has, keeps or possesses any intoxicating liquor for the purpose of sale, in violation of law, or has, keeps or possesses any signs, screens, bars, bottles, glasses, furniture, tools, appliances or other articles or things, describing them, as near as may be, for the purpose of using such articles in the sale, or in any manner, as an aid to the unlawful sale of intoxicating liquor, then, and, in either event, it shall be the duty of such county judge, or justice of the peace, as the case may be, to issue a warrant, commanding the sheriff, or any constable of the county to immediately search such place, room or building, describing the same, as near as may be, or such person, giving name or description; and it shall be the duty of said officer to whom said warrant is delivered by the county judge, or justice of the peace, to immediately search such place, room or building, or such person; and, if refused admission into any such place, room or building, then, and in such event, the officer executing such warrant shall be, and is hereby authorized to force an entrance to any such place, room or building, using such force as may be necessary for that purpose; and he shall search for, and seize the intoxicating liquor described in such warrant, which may be found in such place, room or building, or in the possession, or under the control, of such person named or described in said warrant, that is being kept or possessed for the purpose of being sold in violation of law, and shall also seize all signs, screens, bars, bottles, glasses, furniture, tools, appliances or other articles or things which may have been described in said warrant as being used in keeping or maintaining such place, or used in any manner as an aid to the unlawful sale of intoxicating liquor; and, after seizure, he shall make an accurate inventory of everything seized, stating therein the reasonable market value of each item, and shall securely keep the same until replevied or otherwise disposed of under the provisions of this law. (O. C. 308; add. S. S. 1910, p. 27.)

Art. 364. (352) Warrant to arrest may issue with the search warrant in certain cases.—The magistrate, at the time of issuing a search warrant, may also issue a warrant for the arrest of the person accused of having stolen the property, or of having concealed the same, or of having in his possession or charge property concealed at a suspected place, or of having possession of implements designed for use in the commission of the offense of forgery, counterfeiting or burglary, or of having the charge of arms or munitions prepared for the purpose of insurrection, or of having prepared such arms or munitions, or who may be, in any legal manner, accused of being accomplice or accessory to any of the offenses above enumerated. (O. C. 309.)

Art. 365. (353) Search warrant may command officer to bring party accused before the magistrate.—The search warrant may, in addition to commanding the peace officer to seize property, also require him to bring before the magistrate the person accused of having stolen or concealed the property. (Revision, 1879.)

Art. 366. (354) Requisites of a search warrant.—A search warrant to seize property stolen and concealed shall be deemed sufficient if it contains the following requisites:

1. That it run in the name of "The State of Texas."

2. That it be directed to the sheriff or other peace officer of the proper county.

3. That it describe the property alleged to be stolen or concealed, and the place where it is alleged to be concealed, and order the same to be brought before the magistrate.

4. That it name the person accused of having stolen or concealed the property; or, if his name be unknown, that it describe him with accuracy, and direct the officer to bring such person before the magistrate, or state that the person who stole or concealed the property is unknown.

5. That it be dated and signed by the magistrate. (O. C. 311.)

Art. 367. (355) Requisites of a warrant to search suspected place.—A warrant to search a suspected place shall be deemed sufficient if it contain the following requisites:

1. That it run in the name of "The State of Texas."

2. That it describe with accuracy the place suspected.

3. That it describe, as near as may be, the property supposed to be commonly concealed in such suspected place, or the implements alleged to be there kept for the purpose of aiding in the commission of offenses, and state the particular offense for which such implements are designed.

4. That it name the person accused of having charge of the suspected place, if there be any such person, or, if his name is unknown, that it describe him with accuracy, and direct him to be brought before the magistrate.

5. That it be dated and signed by the magistrate, and directed to the sheriff or other peace officer of the proper county.

6. The search warrant provided for the search for intoxicating liquors, etc., shall, in substance, conform to the following requisites: It shall run in the name of the state of Texas, and be directed to the sheriff or any constable of the county; it shall name

the owner of the intoxicating liquor to be seized, if his name shall be known; it shall command him to search the place, room, premises, building, or any part thereof, or the person named in the complaint, and shall specify, as near as may be, the things to be searched for and seized, and the owner thereof, when known, if not, the same shall allege that the owner is unknown, and shall be signed officially by the magistrate issuing the same; provided, an immaterial variance between the complaint and warrant shall not render the latter void. (O. C. 312; add. S. S. 1910, p. 28.)

CHAPTER THREE

OF THE EXECUTION OF A SEARCH WARRANT

Art. 368. (356) Warrant shall be executed without delay.—Any peace officer to whom a search warrant is delivered shall execute the same without delay, and forthwith return the same to the proper magistrate. It must be executed within three days from the time of its issuance, and shall be executed within a shorter period if so directed in the warrant by the magistrate.

The officer executing the search warrant for the search of premises for intoxicating liquors, etc., shall, within fifteen days, make due return thereof, to the county judge or the justice of the peace, issuing the same; and, when a seizure has been made thereunder, he shall, within five days after said seizure, make said return, showing therein a list of the intoxicating liquor and other articles seized, the reasonable market value thereof, as fixed by him, and the replevy bond or bonds, if any given, and if not replevied, the name and residence of owner or owners of any such property seized and not replevied; and if no one is known to be the owner, then the name or names and residence of the person, firm or corporation, in whose possession, or under whose control said liquor or other property was when seized; on return being made to said county judge or justice of the peace, he shall file said cause in the district court of said county.

At any time before the trial of the issues as provided herein, the owner of said property seized, or any part thereof, or the person in whose possession, or under whose control, the same was at the time of seizure, may replevy the same by giving bond with two or more good and sufficient sureties, or a solvent guaranty or surety company, chartered or authorized to do business under the laws of this state, to be approved by the officer making the seizure, or his successor in office, payable to the state of Texas, in an amount equal to the reasonable market value of the property replevied, as fixed on the inventory, conditioned that should said property in said action be condemned as a nuisance, the obligors in such bond will pay to the state of Texas the reasonable cash market value of the property replevied at the time it was seized, and all costs, including fifteen per cent addition on said amount as a fee to the county or district attorney who discharges such duty for the state, and ten per cent on the amount thereof for the sheriff or constable.

The property, when not replevied, shall remain in the custody of the officer seizing, or in that of his successor in office, until final judgment, subject to such orders for the preservation of same as the judge of the district court of said county may make, either in term time or vacation, as shall appear to be to the best interest of all parties concerned; provided, that the defendant in said suit may replevy the property at any time prior to final trial. (O. C. 313, 319; add. S. S. 1910, pp. 28, 29.)

Art. 369. (357) Three and fifteen whole days allowed for warrant to run.—The three, and the fifteen days' time allowed for the execution of a search warrant shall be three and fifteen whole days, exclusive of the day of its issuance and of the day of its execution. (Revision, 1879.)

Art. 370. (358) Officer shall give notice of purpose to execute warrant.—The officer shall, upon going to the place ordered to be searched, or before seizing any property for which he is ordered to make search, give notice of his purpose to the person who has charge of, or is an inmate of, the place, or who has possession of the property described in the warrant. (O. C. 315.)

Art. 371. (359) Power of officer executing warrant.—In the execution of a search warrant, the officer may call to his aid any number of citizens in his county, who shall be bound to aid in the execution of the same. If he is resisted in the execution of the warrant, he may use such force as is necessary to overcome the resistance, but no greater. (O. C. 314, 316.)

Art. 372. (360) When an officer may enter house by force.—In the execution of a search warrant, the officer may break down a door or a window of any house which he is ordered to search, if he can not effect an entrance by other less violent means; but, when the warrant issues only for the purpose of discovering property stolen, or otherwise obtained in violation of the penal law, without designating any particular place where it is supposed to be concealed, no such authority is given to the officer executing the same. (O. C. 317.)

See P. C. art. 601.

Art. 373. (361) Shall seize persons accused and property, and take them before magistrate.—When the property, implements, arms or munitions which the officer is directed to search for and seize are found, he shall take possession of the same, and carry them before the magistrate. He shall also arrest any person whom he is directed to arrest by the warrant, and forthwith take such person before the magistrate. (O. C. 318.)

Art. 374. (362) Officer shall receipt for property.—An officer taking any property, implements, arms or munitions, shall receipt therefor to the person from whose possession the same may have been taken. (O. C. 320.)

Art. 375. (363) How return made.—Upon returning the search warrant, the officer shall state on the back of the same, or on some paper attached to it, the manner in which it has been executed, and shall likewise deliver to the magistrate an inventory

of the property, implements, arms or munitions taken in his possession under the warrant. (O. C. 321.)

Art. 376. (364) All persons have the right to prevent the consequences of theft, etc.—All persons have a right to prevent the consequences of theft by seizing any personal property which has been stolen, and bringing it, with the supposed offender, if he can be taken, before a magistrate for examination, or delivering the same to a peace officer for that purpose. To justify such seizure, there must, however, be reasonable ground to suppose the property to be stolen, and the seizure must be openly made and the proceedings had without delay. (O. C. 94.)

See Garcia v. Sanders, 37 S. W. 314; Martin v. S., 95 S. W. 501; Southwestern Portland Cement Co. v. Reitzer, 135 S. W. 237; Burkhardt v. S., 202 S. W. 513.

CHAPTER FOUR

PROCEEDINGS ON THE RETURN OF A SEARCH WARRANT

Art. 377. (365) Disposition of stolen property, etc.—When property is taken under the provisions of this title, and delivered to a magistrate, he shall, if it appear that the same was stolen or otherwise acquired in violation of the penal law, dispose of it according to the rules prescribed in this Code with reference to the disposition of stolen property. (O. C. 322.)

See post, ch. 2, title 11.

Art. 378. (366) Officer seizing implements, etc., shall keep same subject, etc., procedure on.—When a warrant has been issued for the purpose of searching a suspected place, and there be found any such implements, arms, munitions or intoxicating liquors, etc., as are alleged to have been there kept or concealed, the same shall be safely kept by the officer seizing the same, subject to the further order of the magistrate.

The clerk of the district court of the county in which the warrant to search for intoxicating liquors, etc., was issued, when said cause is filed, shall docket the same in the name of the state of Texas, as plaintiff, and the principal in the replevy bond, and, if not replevied, the name of the owner or person found in possession as defendant; provided, that when two or more replevy bonds are given, or where there are two or more owners or claimants to the property, or parts thereof, seized, urging distinct and separate claims, then, and, in such event, each case shall be filed and docketed separately in the district court of said county; and, in such event, said county judge or justice of the peace shall make and certify to as many copies of the original papers as there are cases, all of which shall be considered and treated as originals.

The clerk of the district court of said county shall immediately issue notice, which shall be served upon the defendant in the manner required for service of citation in civil suits; provided, the defendant shall be required to answer, if served, ten days before the first day of the return term, excluding the day of service and return; and provided, further, the defendant shall have the right to expedite a trial of the issue by waiving service and time. Said cause, if tried by a jury, shall be submitted on a special issue, which shall be, in substance, whether or not the intoxicating liquors and other property seized constituted a nuisance, within the meaning of this law, when seized. If no jury has been demanded by either side, then said issue shall be determined by the court. Said cause shall have precedence over all other cases, except cases of like kind, or cases to which the state is a party; the same shall be tried and prosecuted under the rules of evidence, practice and procedure, and, in all other respects, as other civil cases; and, in case of appeal, the transcript shall, without delay, be made up and forwarded by the clerk to the proper appellate court; provided, that the state shall not be required to pay or give security for costs, nor bond on appeal, and the same shall be perfected by notice thereof given in open court.

The notice provided for in this law, shall briefly recite the record upon which it is based; provided, that any immaterial variance between the writ and former proceedings will not be fatal thereto. It shall require the defendant to show cause, by a day named, why the liquor and other articles seized should not be declared a nuisance; but the burden of proof shall be upon the state to show, by a preponderance of the evidence, that the allegations of the complaint are substantially true.

Should the state prevail in the suit, the court shall enter a judgment condemning the property seized to be destroyed and against the defendant for all costs, and shall issue a proper writ directing the sheriff, or any constable of the county, to execute the same. The said writ shall conform, in all material respects, to the writ of execution, except that it shall command said officer, in addition to making levy sufficient to collect the amount of costs, to destroy said property in the manner most suited to its nature. If the property, prior to the entry of said judgment, has been replevied, then judgment shall be entered against the principal and the sureties on such bond for an amount equal to the reasonable cash market value of the property at the time the same was seized, including fifteen per cent thereof as attorney's fees and ten per cent fee to the sheriff or constable; and the judgment, when collected, less the costs, shall be paid into the county treasury, and shall become a part of the jury fund of the county. Should the defendant prevail, judgment shall be entered restoring said property seized to the defendant, or discharging the principal and sureties on the replevy bond, as the case may be.

It shall be the duty of the county attorney to represent the state in said cases; and, in all counties where there is a district attorney, he shall assist the county attorney in the prosecution of all such suits. In all cases where the state recovers judgment, there shall be taxed against the defendant, as costs, the usual fees allowed in civil cases, in addition to fifteen per cent of the value of the property for the county or district attorney's fee, and ten per cent of the value thereof for the sheriff and constable; which fees and costs shall not be accounted for by said officers under any provisions of law relating to fees of office; provided, however, that the

state shall, in no event, be liable for, or be required to pay, any costs. Where the county attorney represents the state, he shall be entitled to the fee of fifteen per cent above provided; and, where he is assisted in said civil case by the district attorney, said fee shall be equally divided between them. (O. C. 323; added S. S. 1910, pp. 29, 30.)

Art. 379. (367) Magistrate shall proceed to investigate, etc.—The magistrate, upon the return of a search warrant, shall proceed to try the questions arising upon the same, and shall take testimony as in other examinations before him, and be governed by like rules. (O. C. 330.)

Art. 380. (368) Shall discharge defendant, when.—If the magistrate be not satisfied, upon investigation, that there was good ground for the issuance of the warrant, he shall discharge the defendant, and order restitution of the property or articles taken from him, except implements which appear to be designed for forging, counterfeiting or burglary; and, in such case, the implements shall be kept by the sheriff, or officer who seized the same, subject to the order of the proper court. (O. C. 332.)

Art. 381. (369) Sheriff, etc., shall furnish magistrate schedule of property seized.—The sheriff, of other officer who seizes any property under a search warrant, shall furnish the magistrate to whom he returns the warrant with a certified schedule of the articles of property so seized. (O. C. 324.)

See ante, art. 375.

Art. 382. (370) Proceedings when magistrate is satisfied that warrant was issued upon good ground.—If the magistrate be satisfied there was good ground for issuing the warrant, he shall proceed to deal with the accused in accordance with the rules prescribed in this Code for other criminal cases before an examining court. (O. C. 331.)

Art. 383. (371) Magistrate shall certify record, etc., of proceedings to proper court.—The magistrate shall keep a record of all the proceedings had before him in cases of search warrants, and shall certify the same and deliver them to the clerk of the court having jurisdiction of the case, before the next term of said court, and accompany the same with all the original papers relating thereto, including the certified schedule of the property seized, required by article 381. (O. C. 334.)

TITLE 7

OF THE PROCEEDINGS SUBSEQUENT TO COMMITMENT OR BAIL, AND PRIOR TO THE TRIAL

CHAPTER ONE

THE ORGANIZATION OF THE GRAND JURY

Art. 384. (372) Jury commissioners shall be appointed, and their qualifications.—The district judge shall, at each term of the district court, appoint three persons to perform the duties of jury commissioners, who shall possess the following qualifications:

1. They shall be intelligent citizens of the county, and able to read and write.

2. They shall be freeholders in the county, and qualified jurors in the county.

3. They shall be residents of different portions of the county.

4. They shall have no suit in the district court of such county, which requires the intervention of a jury. (Acts 1876, p. 79, sec. 4.)

See Williams v. S., 75 S. W. 859; Woolen v. S., 150 S. W. 1165.

Art. 385. (373) Commissioners shall be notified of appointment, etc.—The judge shall cause the persons appointed as jury commissioners to be notified by the sheriff or other proper officer of such appointment, and of the time and place, when and where they are to appear before the judge. (Id.)

Art. 386. (374) Oath of jury commissioners.—When the persons appointed appear before the judge, he 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 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. (Id.)

Art. 387. (375) Shall be instructed in their duties, furnished with room, stationery, etc.—The jury commissioners, after they have been organized and sworn, shall be instructed by the judge in their duties and shall then retire, in charge of the sheriff or a deputy sheriff, to a suitable room or apartment, to be secured by the sheriff for that purpose. They shall be furnished by the clerk with the necessary stationery, and with the names of the persons appearing from the records of the court to be exempt or disqualified from serving on the jury at each term; and they shall also be furnished with the last assessment roll of the county. (Id. sec. 6.)

Art. 388. (376) Shall be kept free from intrusion; shall not separate, etc.—The jury commissioners shall be kept free from the intrusion of any person during their session, and shall not separate, without leave of the court, until they shall have completed the duties required of them. (Id.)

Art. 389. (377) Shall select grand jurors.—The jury commissioners shall select, from the citizens of the different portions of the county, sixteen persons, to be summoned as grand jurors for the next term of the district court. (Id. p. 83, sec. 28.)

Garrett v. S., 146 S. W. 930; Woolen v. S., 150 S. W. 1165.

Art. 390. (378) Qualifications of grand jurors.—No person shall be selected or serve as a grand juror who does not possess the following qualifications:

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; but, whenever it shall be made to appear to the court the requisite number of jurors who have paid their poll taxes can not be found within the county, the court may dispense with the requirement of the payment of poll taxes as a qualification for service as a juror.

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.
5. He must not have been convicted of any felony.
6. He must not be under indictment or other legal accusation of theft or of any felony. (Id. p. 78, secs. 1-3; O. C. 389; Const. art. 16, sec. 19; amended Act 1903, 1st S. S. p. 16.)

Thomas v. S., 95 S. W. 1069.

Art. 391. (379) Names of grand jurors shall be returned, how.—The names of the persons selected as grand jurors by the commissioners shall be written upon a paper; and the fact that they were so selected shall be certified and signed by the jury commissioners, who shall place said paper, so certified and signed, in an envelope, and seal the same, and indorse thereon the words, "The list of grand jurors selected at ——— term of the district court," the blank to be filled by stating the month and year in which the term of the court began its session. The commissioners shall write their names across the seal of said envelope, and direct the same to the district judge, and deliver it to him in open court. (Id. sec. 28.)

Art. 392. (380) Judge shall deliver list to clerk.—The judge shall deliver the envelope containing the list of grand jurors, as provided for in the preceding article to the clerk, or one of his deputies, in open court, and without opening the same. (Id. sec. 8.)

Art. 393. (381) Oath shall be administered to clerk, etc., by judge.—Before the list of grand jurors is delivered to the clerk, as provided in the preceding article, the judge shall administer to the clerk, and each of his deputies, in open court, the following oath: "You do swear that you will not open the jury lists now delivered by you, nor permit them to be opened until the time prescribed by law; that you will not, directly or indirectly, converse with any one selected as a juror concerning any case or proceeding which may come before such juror for trial in this court at its next term." (Id.)

Art. 394. (382) Deputy clerk shall take same oath.—Should the clerk subsequently appoint a deputy, such clerk shall administer to him the same oath, at the time of such appointment. (Id.)

Art. 395. (383) When clerk shall open lists, etc.—Within thirty days of the next term of the district court, and not before, the clerk, or one of his deputies, shall open the envelope containing the list of grand jurors, and make out a fair copy of the names of the persons selected as grand jurors, and certify to the same under his official seal, and deliver it to the sheriff, or his deputy. (Id. sec. 9.)

Art. 396. (384) Mode of summoning grand jurors.—It shall be the duty of the sheriff, or his deputy, to summon the persons named in the list, at least three days, exclusive of the day of service, prior to the first day of the term of court at which they are to serve, by giving personal notice to each juror of the time and place, when and where he is to attend as a grand juror, or by leaving at his place of residence, with a member of his family over sixteen years old, a written notice to such juror that he has been selected as a grand juror, and the time and place, when and where he is to attend. (Id.)

Art. 397. (385) Return of officer.—The sheriff or officer, executing such summons, shall return the list on the first day of the term of 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 in his certificate the reason why they have not been summoned. (Id.)

Art. 398. (386) Juror may be fined for not attending.—A jury legally summoned, failing to attend without a reasonable excuse, may, by order of the court entered on the record, be fined not less than ten nor more than one hundred dollars. (Id. sec. 10.)

Art. 399. (387) Failure to select, etc., grand jury; duty of court.—If, for any cause, there should be a failure to select and summon a grand jury, as herein directed, or, when none of those summoned shall attend, the district court shall, on the first day of the organization thereof, direct a writ to be issued to the sheriff, commanding him to summon any number of persons, not less than twelve nor more than sixteen persons, to serve as grand jurors. (O. C. 347.)

Garrett v. S., 146 S. W. 930.

Art. 400. (388) When less than twelve attend, court shall order others summoned.—When a number less than twelve of those summoned to serve as grand jurors are found to be in attendance and qualified to serve as grand jurors, the court shall order the sheriff to summon such additional number of persons as may be deemed necessary to constitute a grand jury of twelve men. (O. C. 354.)

Garrett v. S., 146 S. W. 930.

Art. 401. (389) (369) When jurors shall be required to attend forthwith.—The jurors provided for in the two preceding articles shall be summoned to attend before the court forthwith, and shall be summoned in person, but shall not be entitled to service three days before the time they are to attend, as provided in the case of jurors selected by jury commissioners.

Art. 402. (390) (370) Sheriff not to summon disqualified persons.—The court, upon directing the sheriff to summon grand jurors not selected by the jury commissioners, shall instruct him that he must summon no person to serve as a grand juror who does not possess the qualifications prescribed in article 390.

Art. 403. (391) Court shall test qualifications of jurors, when.—When as many as twelve persons summoned to serve as grand jurors are in attendance upon the court, it shall proceed to test their qualifications as such. (O. C. 348.)

See Williams v. S., 96 S. W. 47.

Art. 404. (392) Shall be interrogated touching qualifications.—Each person who is presented to serve as a grand juror shall, before being impaneled, be interrogated on oath by the district judge, or under his di-

rection, touching his qualifications. (O. C. 349.)

Art. 405. (393) Mode of testing juror's qualifications.—In trying the qualifications of any person to serve as a grand juror, he shall be asked these questions:

1. Are you a citizen of this state and county, and qualified to vote in this county, under the constitution and laws of this state? But whenever it shall be made to appear to the court that the requisite number of jurors who have paid their poll taxes can not be found within the county, the court may dispense with the requirement of the payment of poll taxes as a qualification for service as a juror.

2. Are you a freeholder in this state, or a householder in this county?

3. Are you able to read and write? (O. C. 350; Acts 1903, 1st S. S. p. 16.)

See ante art. 390.

Art. 406. (394) When juror is qualified, shall be accepted, etc.—When, by the answer of the person, it appears to the court that he is a qualified juror, he shall be accepted as such, unless it be shown that he is not of sound mind or of good moral character, or unless it be shown that he is in fact not qualified to serve as a grand juror. (O. C. 351; amended Acts 1903, 1st S. S. p. 16.)

Art. 407. (395) When not qualified, shall be excused.—Any person summoned who does not possess the requisite qualifications shall be excused by the court from serving. (O. C. 352.)

Art. 408. (396) Jury shall be impaneled when, unless, etc.—When twelve qualified jurors are found to be present, the court shall proceed to impanel them as a grand jury, unless a challenge is made, which may be to the array or to any particular individual presented to serve as a grand juror. (O. C. 353.)

See ante art. 403.

Art. 409. (397) Any person may challenge, when.—Any person, before the grand jury has been impaneled, may challenge the array of jurors or any person presented as a grand juror; and, in no other way, shall objections to the qualifications and legality of the grand jury be heard. Any person confined in jail in the county shall, upon his request, be brought into court to make such challenge. (O. C. 362.)

See Barber v. S., 46 S. W. 233; Carter v. S., 46 S. W. 236; Smith v. S., 56 S. W. 54; Matthews v. S., 58 S. W. 88; Leech v. S., 139 S. W. 1147; McCline v. S., 141 S. W. 977; Welch v. S., 147 S. W. 572; Merkel v. S., 171 S. W. 738.

Art. 410. (398) Definition of "array."—By the array of grand jurors is meant the whole body of persons summoned to serve as such before they have been impaneled. (O. C. 368.)

Art. 411. (399) Meaning of "impaneled," etc.—A grand juror is said to be "impaneled" after his qualifications have been tried, and he has been sworn. By the word "panel" is meant the whole body of grand jurors. (O. C. 360.)

Art. 412. (400) Causes for challenge to the array.—A challenge to the array shall be made in writing, and for these causes only:

1. That the persons summoned as grand jurors are not, in fact, the persons selected by the jury commissioners.

2. In case of grand jurors summoned by order of the court that the officer who summoned them had acted corruptly in summoning any one or more of them. (O. C. 363.)

See ante art. 409; Leech v. S., 139 S. W. 1147.

Art. 413. (401) Causes for challenge to a particular juror.—A challenge to a particular grand juror may be made orally, and for the following causes only:

1. That he is not a qualified grand juror.

2. That he is the prosecutor upon an accusation against the person making the challenge.

3. That he is related by consanguinity or affinity to some person who has been held to bail, or who is in confinement upon a criminal accusation. (O. C. 364.)

Leech v. S., 139 S. W. 1147; Welch v. S., 147 S. W. 572.

Art. 414. (402) Court shall decide challenge summarily.—When a challenge to the array, or to any individual, has been made, the court shall hear proof, and decide in a summary manner whether the challenge be well founded or not. (O. C. 365.)

Art. 415. (403) Court shall order other jurors summoned, when.—If the challenge to the array be sustained, or, if by challenge to any particular individual, the number of grand jurors be reduced below twelve, the court shall order another grand jury to be summoned, or shall order the panel to be completed, as the case may be, as provided in previous articles of this chapter. (O. C. 366, 367.)

Art. 416. (404) Oath of grand jurors.—When the grand jury is completed, the court shall appoint one of the number foreman; and the following oath shall be administered by the court, or under its direction, to each of the jurors: "You solemnly swear (or affirm, as the case may be) that you will diligently inquire into, and true presentment make, of all such matters and things as shall be given you in charge; the state's counsel, your fellows' and your own, you shall keep secret, unless required to disclose the same in the course of a judicial proceeding in which the truth or falsity of evidence given in the grand jury room, in a criminal case, shall be under investigation. You shall present no person from envy, hatred or malice; neither shall you leave any person unpresented for love, fear, favor, affection or hope of reward; but you shall present things truly as they come to your knowledge, according to the best of your understanding, so help you God." (O. C. 356; 1875, p. 166.)

See Hines v. S., 39 S. W. 935; Gutgesell v. S., 43 S. W. 1016; Cristian v. S., 51 S. W. 903; Grimsinger v. S., 69 S. W. 583.

Art. 417. (405) Court shall instruct grand jury.—After the grand jury has been sworn, the court shall give them instruction as to their duty. (O. C. 357.)

Art. 418. (406) Bailiffs may be appointed; their oath.—One or more bailiffs may be appointed by the court to attend upon the grand jury, and, at the time of appointment, the following oath shall be administered to each of them by the court, or under its direction: "You solemnly swear (or affirm, as the case may be) that you will faithfully and impartially perform all the duties of bailiff of the grand jury, and that you will keep secret the proceedings of the grand jury, so help you God." (O. C. 358.)

See Gutgesell v. S., 43 S. W. 1016.

Art. 419. (407) Bailiff's duties.—A bailiff is to obey the instructions of the foreman, to summon all witnesses, and, generally, to perform all such duties as are required of him by the foreman. Where two bailiffs are appointed, one of them shall be always with the grand jury. (O. C. 359.)

Art. 419a. Bailiff's compensation.—Each grand jury bailiff appointed as such bailiff by the court shall receive as compensation for his services the sum of Three Dollars for each day that he may serve as a grand jury bailiff. (Acts 1919, ch. 26, sec. 3.)

Art. 420. (408) (388) Bailiff shall take no part in discussions of grand jury; punishment.—A bailiff shall take no part in the discussions or deliberations of the grand jury, and shall not be present when the grand jury is either discussing or voting upon a question; and any violation of duty upon the part of a bailiff shall be reported by the grand jury to the court, and, for such violation of duty, he may be punished by the court as for contempt. (O. C. 361.)

Art. 421. (409) Another foreman appointed, when.—In case of the absence of the foreman of the grand jury from any cause, or of his inability or disqualification to act, the court shall appoint in his place some other member of the body. (O. C. 361.)

Art. 422. (410) Nine members constitute a quorum.—Nine members shall be a quorum for the purpose of discharging any duty or exercising any right properly belonging to the grand jury. (Const. art. 5, sec. 13; O. C. 370.)

Leech v. S., 139 S. W. 1147.

Art. 423. (411) (391) May be reassembled after having been discharged for the term.—When a grand jury has been discharged by the court for the term, it may be reassembled by the court at any time during the term; and, in case of failure of one or more of the members to reassemble, the court may complete the panel by impaneling other qualified persons in their stead, in accordance with the rules prescribed in this chapter for completing the grand jury in the first instance.

See Gay v. S., 49 S. W. 612; Matthews v. S., 58 S. W. 86; Ex parte Glascow, 64 S. W. 1053; Leech v. S., 139 S. W. 1147; Vasquez v. S., 172 S. W. 225.

CHAPTER TWO

OF THE DUTIES, PRIVILEGES AND POWERS OF THE GRAND JURY

Art. 424. (412) Suitable place to be prepared for grand jury.—The grand jury, after being organized, shall proceed to the discharge of their duties; and some suitable place shall be prepared by the sheriff for their sessions. (O. C. 371.)

Art. 425. (413) Deliberations shall be secret.—The deliberations of the grand jury shall be secret; and any member of the body or bailiff who divulges anything transpiring before them, in the course of their official duties, shall be liable to a fine, as for contempt of the court, not exceeding one hundred dollars, and to imprisonment not exceeding five days. (O. C. 372.)

See P. C. art. 316.

Art. 426. (414) Attorney representing the state may go before, etc.—The attorney representing the state may go before the grand jury at any time, except when they are discussing the propriety of finding a bill of indictment or voting upon the same. (O. C. 373.)

See Stuart v. S., 34 S. W. 118; Moody v. S., 121 S. W. 1117; Haywood v. S., 134 S. W. 218; McGregor v. S., 201 S. W. 184.

Art. 427. (415) Attorney may examine witnesses, etc.—The attorney representing the state may examine the witnesses before the grand jury, and may advise as to the proper mode of interrogating them, if desired, or if he thinks it necessary. (O. C. 375.)

Art. 428. (416) Grand jury may send for attorney representing the state, etc.—When any question arises before a grand jury respecting the proper discharge of their duties, or any matter of law about which they may require advice, it is their right to send for the attorney representing the state, and take his advice thereon. (O. C. 374.)

Art. 429. (417) Grand jury may seek advice from court.—The grand jury may also seek and receive advice from the court touching any matter before them, and, for this purpose, shall go into court in a body; but they shall so guard the manner of propounding their questions as not to divulge the particular accusation that is pending before them; or they may propound their questions in writing, upon which the court may give them the desired information in writing. (O. C. 376.)

Art. 430. (418) (398) Foreman shall preside over grand jury, etc.—The foreman shall preside over the sessions of the grand jury, and conduct its business and proceedings in an orderly manner. He may appoint one or more of the members of the body to act as clerks for the grand jury.

Art. 431. (419) Grand jury shall meet and adjourn.—The grand jury shall meet and adjourn at times agreed upon by a majority of the body; but they shall not adjourn, at any one time, for more than three days, unless by consent of the court; but, with the consent of the court, they may adjourn for a longer time, and shall, as near as may be, conform their adjournments to those of the court. (O. C. 377.)

Leech v. S., 139 S. W. 1147.

Art. 432. (420) Duties of grand jury.—It is the duty of the grand jury to inquire into all offenses liable to indictment of which any of the members may have knowledge, or of which they shall be informed by the attorney representing the state, or any other credible person. (O. C. 378.)

See Moore v. S., 88 S. W. 228.

Art. 433. (421) Foreman may issue process for witnesses.—The foreman of the grand jury may issue a summons or attachment for any witness in the county where they are sitting; which summons or attachment may require the witness to appear before them at a time fixed, or forthwith, without stating the matter in respect to which the witness will be called upon to testify. (O. C. 379; Act Aug. 15, 1870.)

Art. 434. (422) Attachment for witnesses in another county, obtained how.—The foreman of the grand jury, or the attorney representing the state, may, upon application in writing to the district court, stating the name and residence of the wit-

ness, and that his testimony is believed to be material, cause an attachment to be issued to any county in the state for such witness, returnable to the grand jury then in session, or to the next grand jury for the county from whence the same issued, as such foreman or attorney may desire; which attachment shall command the sheriff or any constable of the county where such witness resides to arrest such witness, and have him before the grand jury at the time and place specified in the writ. (Act Aug. 15, 1870.)

Art. 435. (423) Attachment may be obtained in vacation, etc.—The district or county attorney may cause an attachment for a witness to be issued, as provided in the preceding article, either in term time or in vacation. (Id.)

Art. 436. (424) (404) Bailiff, etc., shall execute and return process from grand jury, etc.—The bailiff or other officer who receives process to be served from a grand jury shall forthwith execute the same, and return it to the foreman, if the grand jury be in session; and, if the grand jury be not in session, the process shall be returned to the clerk of the district court. If the process is returned not executed, the return shall state the reason why it was not executed.

Art. 437. (425) (405) Evasion of service by witness may be punished by fine.—If it be made to appear satisfactorily to the court that a witness for whom a summons of attachment has been issued to go before the grand jury is in any manner wilfully evading the service of such summons or attachment, the court may fine such witness, as for contempt, not exceeding one hundred dollars.

Art. 438. (426) When witness refuses to testify, dealt with how.—When a witness, brought in any manner before a grand jury, refuses to testify, such facts shall be made known to the attorney representing the state or to the court; and the court may compel the witness to answer the question, if it appear to be a proper one, by imposing a fine not exceeding one hundred dollars, and by committing the party to jail until he is willing to testify. (O. C. 381.)

See Ex parte Wilson, 47 S. W. 996; Ex parte Gould, 132 S. W. 364, 31 L. R. A. (N. S.) 835.

Art. 439. (427) Oaths to witnesses.—The following oath shall be administered by the foreman, or under his direction, to all witnesses before being interrogated: "You solemnly swear (or affirm, as the case may be) that you will not divulge, either by words or signs, any matter about which you may be interrogated, and that you will keep secret all proceedings of the grand jury which may be had in your presence, and that you will true answers make to such questions as may be propounded to you by the grand jury, or under its direction, so help you God." (O. C. 382; Acts 1875, p. 108.)

Gutgesell v. S., 43 S. W. 1016; Barnes v. S., 152 S. W. 1043; Bell v. S., 171 S. W. 239.

Art. 440. (428) How witnesses shall be questioned.—The grand jury, in propounding questions to witness, shall direct the examination to the person accused or suspected, shall state the offense with which he is charged, the county where the offense is said to have been committed, and, as nearly as may be, the time of the commission of the offense; but should the jury think it necessary, they may ask the witness in general terms whether he has knowledge of the violation of any particular law by any person, and, if so, by what person. (O. C. 383.)

Ex parte Gould, 132 S. W. 364, 31 L. R. A. (N. S.) 835; Bell v. S., 171 S. W. 239.

Art. 441. (429) When a felony has been committed by unknown person.—When a felony has been committed in any county within the jurisdiction of the grand jury, and the name of the person guilty thereof is unknown, or where it is uncertain by whom the same was committed, the grand jury may ask any pertinent question relative to the transaction in such manner as to ascertain who is the guilty party. (O. C. 383a.)

Art. 442. (430) After the testimony, grand jury shall vote.—After all the testimony which is accessible to the grand jury shall have been given in respect to any criminal accusation, the vote shall be taken as to the presentment of a bill of indictment, and, if nine members concur in finding the bill, the foreman shall make a memorandum of the same for the purpose of enabling the attorney who represents the state to write the indictment. (O. C. 385.)

Holcomb v. S., 132 S. W. 362.

Art. 443. (431) Memorandum shall state what.—The memorandum furnished the attorney shall state: The name of the defendant, if known, and, if unknown, shall describe him; the name of the party injured or attempted to be injured, if any one; the nature of the offense; the time and place of its commission; and the names of the witnesses on whose testimony the accusation is sustained. (O. C. 386.)

See Dickinson v. S., 41 S. W. 759.

Art. 444. (432) Indictment shall be prepared by attorney and signed, etc., by foreman.—The attorney representing the state shall prepare all indictments which have been found by a grand jury with as little delay as possible, and, when so prepared, shall deliver them to the foreman, who shall sign the same officially, and the attorney representing the state indorse thereon the names of the witnesses upon whose testimony the same was found. (O. C. 387.)

Day v. S., 134 S. W. 215; Luster v. S., 141 S. W. 209.

Art. 445. (433) Indictment shall be presented in open court.—When the indictment is ready to be presented, the grand jury shall go in a body into open court, and, through their foreman, deliver the indictment to the judge of the court; and at least nine members of the grand jury must be present on such occasions. (O. C. 388.)

Art. 446. (434) Presentment to be entered of record, etc.—The fact of a presentment of indictment in open court by a grand jury shall be entered upon the minutes of the proceedings of the court, noting briefly the style of the criminal action and the file number of the indictment, but omitting the name of the defendant, unless he is in custody or under bond. (Acts 1876, p. 8.)

See Haynes v. S., 83 S. W. 16; Fields v. S., 151 S. W. 1051.

CHAPTER THREE

OF INDICTMENTS AND INFORMATIONS

Art. 447. (435) Felonies presented by indictment only.—All felonies shall be presented by indictment only, except in cases specially provided for. (O. C. 390; Const. art. 1, sec. 10.)

Art. 448. (436) Misdemeanors presented by indictment, or, etc.—All misdemeanors may be presented by either information or indictment. (O. C. 391.)

See Philpott v. S., 62 S. W. 921; Ethridge v. S., 172 S. W. 784; Ex parte Drane, 191 S. W. 1156.

Art. 449. (437) All offenses must be presented by indictment or information.—All offenses, known to the penal law of this state, must be prosecuted, either by indictment or information. This provision does not include fines and penalties for contempt of court, nor special cases in which inferior courts exercise jurisdiction. (O. C. 392.)

Sponberg v. S., 131 S. W. 541; Ethridge v. S., 172 S. W. 784.

Art. 450. (438) An "indictment" is what.—An indictment is the written statement of a grand jury accusing a person therein named of some act or omission which, by law, is declared to be an offense. (O. C. 394.)

Art. 451. (439) Requisites of an indictment.—An indictment shall be deemed sufficient if it has the following requisites:

1. It shall commence, "In the name and by the authority of the state of Texas."

2. It must appear therefrom that the same was presented in the district court of the county where the grand jury is in session.

3. It must appear to be the act of a grand jury of the proper county.

4. It must contain the name of the accused, or state that his name is unknown, and, in case his name is unknown, give a reasonably accurate description of him.

5. It must show that the place where the offense was committed is within the jurisdiction of the court in which the indictment is presented.

6. The time mentioned must be some date anterior to the presentment of the indictment, and not so remote that the prosecution of the offense is barred by limitation.

7. The offense must be set forth in plain and intelligible words.

8. The indictment must conclude, "Against the peace and dignity of the state."

9. It shall be signed officially by the foreman of the grand jury. (O. C. 395.)

See Street v. S., 45 S. W. 577; Williamson v. S., 55 S. W. 570; Mott v. S., 58 S. W. 401; Smith v. S., 58 S. W. 97; Thompson v. S., 55 S. W. 331; Coleman v. S., 62 S. W. 753; Harwell v. S., 65 S. W. 520; Weaver v. S., 76 S. W. 564; Day v. S., 134 S. W. 215; Luster v. S., 141 S. W. 209; Knight v. S., 144 S. W. 967; Matthews v. S., 160 S. W. 1185; Cresencio v. S., 165 S. W. 936; Gray v. S., 178 S. W. 337; Collins v. S., 178 S. W. 345; Ferguson v. S., 189 S. W. 271.

Art. 452. (440) What should be stated in an indictment, etc.—Everything should be stated in an indictment which it is necessary to prove, but that which is not necessary to prove need not be stated. (O. C. 396.)

Fitch v. S., 127 S. W. 1040; Martin v. S., 179 S. W. 121.

Art. 453. (441) The certainty required.—The certainty required in an indictment is such as will enable the accused to plead the judgment that may be given upon it, in bar of any prosecution for the same offense. (O. C. 398.)

See post, arts. 459 et seq.; Bailey v. S., 141 S. W. 224; King v. S., 146 S. W. 543; Robertson v. S., 150 S. W. 893; Thompson v. S., 152 S. W. 893; Ferrell v. S., 152 S. W. 901; Minter v. S., 159 S. W. 286; Byrd v. S., 162 S. W. 360; Cresencio v. S., 165 S. W. 936; Bradfield v. S., 166 S. W. 734, Ann. Cas. 1917C, 696; Gray v. S., 178 S. W. 337; Martin v. S., 179 S. W. 121; Winterman v. S., 179 S. W. 704; Collins v. S., 182 S. W. 327; Wright v. S., 203 S. W. 775.

Art. 454. (442) Particular intent; intent to defraud.—Where a particular intent is a material fact in the description of the offense, it must be stated in the indictment; but, in any case where an intent to defraud is required to constitute an offense, it shall be sufficient to allege an intent to defraud, without naming therein the particular person intended to be defrauded. (O. C. 399.)

Art. 455. (443) Allegation of venue, etc.—When, by law, the offense may be prosecuted in either of two or more counties, the indictment may allege the offense to have been committed in the county where the same is prosecuted, or in any county or place where the offense was actually committed. (O. C. 400.)

See ante art. 451; Trail v. S., 118 S. W. 714.

Art. 456. (444) (425) Allegation of name.—In alleging the name of the defendant, or of any other person necessary to be stated in the indictment, it shall be sufficient to state one or more of the initials of the Christian name and the surname. When a person is known by two or more names, it shall be sufficient to state either name. When the name of the person is unknown to the grand jury, that fact shall be stated, and, if it be the person accused of the offense, a reasonably accurate description of him shall be given in the indictment.

See Stokes v. S., 81 S. W. 1213; Gossett v. S., 123 S. W. 428; Ex parte Campbell, 149 S. W. 193; Bradford v. S., 160 S. W. 1185; Cresencio v. S., 165 S. W. 936; Carter v. S., 181 S. W. 473; Kelly v. S., 195 S. W. 853; Cannon v. S., 202 S. W. 83.

Art. 457. (445) (426) Allegation of ownership.—Where one person owns the property, and another person has the possession, charge, or control of the same, the ownership thereof may be alleged to be in either. Where property is owned in common, or jointly, by two or more persons, the ownership may be alleged to be in all or either of them. When the property belongs to the estate of a deceased person, the ownership may be alleged to be in the executor, administrator or heirs of such deceased person, or in any one of such heirs. Where it is the separate property of a married woman, the ownership may be alleged to be in her, or in her husband. Where the ownership of the property is unknown to the grand jury, it shall be sufficient to allege that fact.

See P. C. arts. 1329, 1348; Tidwell v. S., 45 S. W. 1015; McGee v. S., 46 S. W. 930; Cogshell v. S., 58 S. W. 1011; Clements v. S., 66 S. W. 301; Kelly v. S., 70 S. W. 20; Bell v. S., 71 S. W. 24; Jones v. S., 80 S. W. 530; Moss v. S., 81 S. W. 45; Hames v. S., 81 S. W. 708; Bailey v. S., 97 S. W. 694; Duncan v. S., 91 S. W. 572; Kauffman v. S., 109 S. W. 172; Smith v. S., 111 S. W. 939; Pate v. S., 113 S. W. 757; Lockett v. S., 129 S. W. 627; Davis v. S., 140 S. W. 349; Hatfield v. S., 147 S. W. 236; Lane v. S., 152 S. W. 897; Hamilton v. S., 153 S. W. 134; Partridge v. S., 193 S. W. 146; Green v. S., 199 S. W. 622.

Art. 458. (446) (427) Description of property.—When it becomes necessary to describe property of any kind in an indictment, a general description of the same by name, kind, quality, number and ownership,

if known, shall be sufficient. If the property be real estate, its general locality in the county, and the name of the owner, occupant or claimant thereof, shall be a sufficient description of the same.

Art. 459. (447) (428) "Felonious" and "feloniously" not necessary.—In an indictment for a felony, it is not necessary to use the words "felonious" or "feloniously."

Art. 460. (448) Certainty; what sufficient.—An indictment for any offense against the penal laws of this state shall be deemed sufficient which charges the commission of the offense in ordinary and concise language in such a manner as to enable a person of common understanding to know what is meant, and with that degree of certainty that will give the defendant notice of the particular offense with which he is charged, and enable the court, on conviction, to pronounce the proper judgment; and in no case are the words "force and arms" or "contrary to the form of the statute" necessary. (Acts 1881, p. 60, sec. 1.)

See ante, art. 453; Goodwin v. S., 138 S. W. 399; Bailey v. S., 141 S. W. 224; Robinson v. S., 149 S. W. 186; Robertson v. S., 150 S. W. 893; Thompson v. S., 152 S. W. 893; Ferrell v. S., 152 S. W. 901; Minter v. S., 159 S. W. 286; Byrd v. S., 162 S. W. 360; Cresencio v. S., 165 S. W. 936; Bradfield v. S., 166 S. W. 734, Ann. Cas. 1917C, 696; Martin v. S., 179 S. W. 121; Winterman v. S., 179 S. W. 704; Collins v. S., 182 S. W. 327.

Art. 461. (449) Special and general terms in statute.—When a statute creating or defining any offense uses special or particular terms, an indictment on it may use the general term, which, in common language, embraces the special term. (Id. sec. 2.)

See ante art. 451.

Art. 462. (450) "Public place;" allegation of.—When, to constitute the offense, an act must be done in a public place, it is sufficient to allege that the act was done in a "public place." (Id. sec. 3.)

See P. C. art. 550.

Art. 463. (451) Act, with intent to commit an offense.—An indictment for an act done with intent to commit some other offense may charge in general terms the commission of such act with intent to commit such other offense, without stating the facts constituting such other offense. (Id. sec. 4.)

Art. 464. (452) Selling intoxicating liquor; sufficient allegations as to.—In an indictment for selling intoxicating liquors in violation of any law of this state, it shall be sufficient to charge that the defendant sold intoxicating liquors contrary to law, naming the person to whom sold, without stating the quantity sold; and, under such indictment, any act of selling in violation of the law may be proved. (Id. sec. 5.)

See P. C. art. 593; Slack v. S., 136 S. W. 1073; Warner v. S., 147 S. W. 265; Winterman v. S., 179 S. W. 704; Wright v. S., 203 S. W. 775.

Art. 465. (453) Perjury; sufficient allegation for.—An indictment for perjury or false swearing need not charge the precise language of the false statement, but may state the substance of the same; and no such indictment shall be held insufficient on account of any variance which does not affect the subject matter or general import of such false statement; and it is not necessary in such indictment to set forth the pleadings, records or proceedings with which the false statement is connected, nor the commission or the authority of the court, or person before whom the perjury was committed; but it is sufficient to state the name of the court or officer by whom the oath was administered, with the allegation of the falsity of the matter on which the perjury is assigned. (Id. sec. 6.)

See P. C. art. 309.

Art. 466. (454) Bribery; sufficient allegation for.—An indictment, under the laws relating to bribery, shall be sufficient if it charges that the defendant bribed or attempted to bribe any officer or other person named in the Penal Code who may be subject to bribery, with intent to influence the action of such person; or that any such officer or other person accepted, or agreed to accept, a bribe given or promised to influence his action, stating the particular thing or advantage given, promised, accepted, or agreed to be accepted, and the particular act to be influenced thereby. (Id. sec. 7.)

Art. 467. (455) Misapplication of public money; sufficient charge of.—Under the laws relating to the misapplication of public money, an indictment may charge that the defendant misapplied certain public moneys in his hands by virtue of his trust, stating the amount of such public moneys and the manner in which the same was misapplied. (Id. sec. 8.)

Art. 468. (456) Description of money, etc., in theft, etc.—In indictments for theft or embezzlement of any coin or paper current as money, or of any checks, bills of exchange, or other such security, it shall be sufficient to describe the property in general terms; as, "money," "checks," "bills of exchange," or other evidence of debt, of or about a certain amount. (Id. sec. 9.)

Art. 469. (457) Carrying weapons; indictment for.—An indictment under the laws regulating the carrying of deadly weapons may charge that the defendant carried about his person a pistol, or other deadly weapon, without authority of law, without a further averment of a want of legal excuse or authority on his part. (Id. sec. 10.)

See P. C. art. 476.

Art. 470. (458) Certain forms of indictments prescribed.—The following forms of indictments in cases in which they are applicable are sufficient, and analogous forms may be used in other cases:

"Form No. 1—General form: In the name and by the authority of the state of Texas, the grand jury of ——— county present in the district court of said county, that about the ——— day of ———, A. D. ———, in ——— county, Texas [name or description of defendant], did [description of offense] against the peace and dignity of the state.

"———, Foreman of the grand jury."

"Form No. 2—Murder: A B did, with malice aforethought, kill C D by shooting him with a gun; or, by striking him with an iron wedge; or, by poisoning him," etc.

"Form No. 3—Assault to commit felony: A B did assault C D with intent to murder, rob, maim, disfigure or castrate him; or, did assault C D in attempting to commit burglary; or, did assault E F, a female, with intent to rape her," etc.

"Form No. 5—Simple assault: A B did assault C D."

"Form No. 6—Bribery: A B did bribe C D,

a sheriff, by paying him ten dollars in money with intent that said C D should permit E F, a prisoner in his custody, to escape."

"Form No. 7—Gaming: A B and C D did play at a game with cards in a public place (or in a storehouse, etc.); or, A B and C D did bet at a game with dice; or, A B and C D did bet at a game of dominoes, crack-loo and crack-or-loo; or, A B and C D did bet at crack-loo or crack-or-loo. A B did keep a table (bank or alley) for gaming; or, A B did bet at a ten pin alley; or, did permit gaming in his house (or house under his control); or, did rent to C D a room to be used as a place for gaming; or, did bet on the result of an election."

"Form No. 8—Rape: A B, an adult male, did rape C D, a female."

"Form No. 9—Affray: A B and C D did fight together in a public place."

"Form No. 10—Adultery and fornication: A B, a man, and C D, a woman, did have habitual carnal intercourse with each other, the said A B being lawfully married to E F."

"Form No. 11—Unlawful marriage: A B, having a wife then living, did unlawfully marry C D; or, A B, a white person, and C D, a negro, did knowingly intermarry with each other; or, having intermarried, did continue to live together as man and wife."

"Form No. 12—Escape: A B, a sheriff, having the legal custody of C D, then accused of a murder in the first degree, did wilfully permit him to escape."

"Form No. 14—Keeping disorderly house: A B did keep a disorderly house."

"Form No. 15—Lotteries: A B did establish a lottery, or did dispose of certain property by lottery."

"Form No. 16—Unlawful practice of medicine: A B did practice medicine without authority of law."

"Form No. 17—False imprisonment: A B did wilfully and without lawful authority detain C D against his consent."

"Form No. 18—Kidnapping: A B did falsely imprison C D for the purpose of removing him from the state."

"Form No. 19—Arson: A B did wilfully burn a certain house, the property of C D."

"Form No. 22—Swindling: A B did falsely represent to C D that he had ten bales of cotton packed and ready for delivery, and by means of such false representation did obtain from C D one hundred dollars in money, with intent to appropriate it to his own use."

"Form No. 23—Fraudulent disposition of mortgaged property: A B, having given to C D a lien in writing on his crop of cotton, did dispose of the same with intent to defraud said C D."

"Form No. 24—Counterfeiting coin: A B did counterfeit a silver coin of the republic of Mexico, called a dollar, which was at the time current as money in the United States."

"Form No. 25—Conspiracy: A B and C D did conspire together to murder E F."

"Form No. 26—Robbery: A B did rob C D of twenty dollars in money."

"Form No. 27—Forgery: A B did forge a certain false instrument in writing in substance as follows:" [Setting out the forged instrument.]

"Form No. 28—Misapplication of public money: A B, a collector of taxes, did misapply one thousand dollars public moneys in his hands by virtue of his office, by converting said moneys to his own use." (Id. sec. 11.)

Burk v. S., 124 S. W. 658.

Art. 471. (459) Proof not dispensed with.—Nothing contained in article 470 shall be construed to dispense with the necessity for proof of all the facts constituting the offense charged in an indictment as the same is defined by law. (Id. sec. 12.)

Art. 472. (460) Libel; indictment for.—In an indictment for libel, it is not necessary to set forth any intrinsic facts for the purpose of showing the application to the libeled party of the defamatory matter on which the indictment is founded; it is sufficient to state generally that the same was published concerning him. (Id. sec. 13.)

See P. C. art. 1151.

Art. 473. (461) Disjunctive allegations.—When the offense may be committed by different means or with different intents, such means or intents may be alleged in the same count in the alternative. (Id. sec. 14.)

Howard v. S., 143 S. W. 178.

Art. 474. (462) Statutory words need not be strictly followed.—Words used in a statute to define an offense need not be strictly pursued in the indictment; it is sufficient to use other words conveying the same meaning, or which include the sense of the statutory words. (Id. sec. 15.)

Art. 475. (463) Matters of judicial notice, etc., need not be stated.—Matters of which judicial notice is taken (among which are included the authority and duties of all officers elected or appointed under the general laws of this state), and presumptions of law need not be stated in an indictment. (Id. sec. 16.)

Art. 476. (464) Defects of form do not affect trial, etc.—An indictment shall not be held insufficient, nor shall the trial, judgment or other proceedings thereon be affected, by reason of any defect or imperfection of form in such indictment which does not prejudice the substantial rights of the defendant. (Id. sec. 17.)

See post, arts. 576, 597; Bailey v. S., 141 S. W. 224; Meyer v. S., 145 S. W. 919; Thompson v. S., 152 S. W. 893; Cresencio v. S., 165 S. W. 936; Flores v. S., 198 S. W. 575.

Art. 477. (465) Definition of an "information."—An "information" is a written statement filed and presented in behalf of the state by the district or county attorney, accusing the defendant therein named of an offense which is by law subject to be prosecuted in that manner. (O. C. 402.)

See ante, art. 448.

Art. 478. (466) Requisites of an information.—An information is sufficient if it has the following requisites:

1. It shall commence, "In the name and by the authority of the state of Texas."

2. That it shall appear to have been presented in a court having jurisdiction of the offense set forth.

3. That it appear to have been presented by the proper officer.

4. That it contains the name of the person accused, or be stated that his name is unknown, and give a reasonably accurate description of him.

5. It must appear that the place where the offense is charged to have been commit-

ted is within the jurisdiction of the court where the information is filed.

6. That the time of the commission of the offense be some date anterior to the filing of the information, and that the offense does not appear to be barred by limitation.

7. That the offense be set forth in plain and intelligible words.

8. That the information conclude, "Against the peace and dignity of the state."

9. It shall be signed by the district or county attorney, officially. (O. C. 403.)

See Scott v. S., 56 S. W. 61; Adams v. S., 81 S. W. 963; Germany v. S., 137 S. W. 130; Gentry v. S., 137 S. W. 696; Head v. S., 141 S. W. 536; Sandoloski v. S., 143 S. W. 151; Meyer v. S., 145 S. W. 919; Hooks v. S., 158 S. W. 808; Murphy v. S., 164 S. W. 1; Moreno v. S., 180 S. W. 124; Mays v. S., 202 S. W. 733.

Art. 479. (467) Shall not be presented until oath has been made, etc.—An information shall not be presented by the district or county attorney until oath has been made by some credible person, charging the defendant with an offense. The oath shall be reduced to writing and filed with the information. It may be sworn to before the district or county attorney who, for that purpose, shall have power to administer the oath, or it may be made before any officer authorized by law to administer oaths. (O. C. 404.)

See post, arts. 972, 973; Dominguez v. S., 35 S. W. 973; Johnson v. S., 49 S. W. 618; Johnson v. S., 85 S. W. 274; Stepp v. S., 109 S. W. 1093; Smalley v. S., 127 S. W. 225; Montgomery v. S., 131 S. W. 1087; Germany v. S., 137 S. W. 130; Gentry v. S., 137 S. W. 696; Murphy v. S., 164 S. W. 1; Ethridge v. S., 172 S. W. 784.

Art. 480. (468) Rules as to indictments applicable to informations.—The rules laid down in this chapter with respect to the allegations in indictments and the certainty required are applicable also to informations. (O. C. 406.)

See ante, art. 478; Meyer v. S., 145 S. W. 919.

Art. 481. (469) (433) Indictment, etc., may contain several counts.—An indictment or information may contain as many counts, charging the same offense, as the attorney who prepares it may think necessary to insert; and an indictment or information shall be sufficient if any one of its counts be sufficient.

Johnson v. S., 107 S. W. 52; Wilson v. S., 189 S. W. 1071.

Art. 482. (470) When indictment or information has been lost, mislaid, etc.—When an indictment or information has been lost, mislaid, mutilated or obliterated, the district or county attorney may suggest the fact to the court; and the same shall be entered upon the minutes of the court; and, in such case, another indictment or information may be substituted, upon the written statement of the district or county attorney that it is substantially the same as that which has been lost, mislaid, mutilated or obliterated. Or another indictment may be presented, as in the first instance; and, in such case, the period for the commencement of the prosecution shall be dated from the time of making such entry. (O. C. 406a.)

See Burrage v. S., 44 S. W. 169; Carter v. S., 58 S. W. 80; Bradburn v. S., 65 S. W. 519; Morrison v. S., 66 S. W. 779; Bowers v. S., 75 S. W. 299; James v. S., 105 S. W. 179; Brown v. S., 124 S. W. 101; Kelly v. S., 127 S. W 544; James v.. S., 138 S. W. 408; White v. S., 160 S. W. 703; Bennett v. S., 179 S. W. 713; Mirick v. S., 204 S. W. 222.

Art. 483. (471) Order transferring cases.—Upon the filing of an indictment in the district court of each county in this state, which charges an offense, over which such court has no jurisdiction, the judge of such court shall immediately, or as soon as convenient, make an order transferring the same to such inferior court as may have jurisdiction to try the offense therein charged, stating in such order the cause transferred and to what court transferred. (Const. art. 5, sec. 17; Acts 1876, p. 135; Acts 1879, p. 71; Acts 1881, p. 2.)

See Roller v. S., 66 S. W. 777; Haynes v. S., 83 S. W. 16; Adams v. S., 85 S. W. 1079; Bird v. S., 91 S. W. 791; Oxford v. S., 94 S. W. 463; Richards v. S., 140 S. W. 459; Herenz v. S., 199 S. W. 618; Harper v. S., 207 S. W. 96.

Art. 484. (472) What causes shall be transferred to justice of the peace at county seat.—Causes over which justices of the peace have jurisdiction may be transferred to a justice of the peace at the county seat, or, in the discretion of the judge, to a justice of the precinct in which the same can be most conveniently tried, as may appear by memorandum indorsed by the foreman of the grand jury on the indictment or otherwise; but, if it appear to the judge that the offense has been committed in any incorporated town or city, the cause shall be transferred to a justice in said town or city, if there be one therein; and any justice, to whom any such cause may be transferred, shall have jurisdiction to try the same. (Const. art. 5, sec. 16; Acts 1879, ch. 65, p. 71; original Act Aug. 12, 1876, ch. 91, p. 135.)

Art. 485. (473) Duty of clerk of district court when case is transferred.—It shall be the duty of the clerk of the district court, without delay, to deliver the indictments in all cases transferred, together with all the papers relating to each case, to the proper court or justice of the peace, as directed in the order of transfer; and he shall accompany each case with a certified copy of all the proceedings taken therein in the district court, and also with a bill of the costs that have accrued therein in the district court; and the said costs shall be collected in the court in which said cause is tried, in the same manner as other costs are collected in criminal cases. (Acts 1876, p. 135.)

See Austin v. S., 40 S. W. 724; Dittforth v. S., 80 S. W. 628; Ellis v. S., 130 S. W. 170; Herenz v. S., 199 S. W. 618; Harper v. S., 207 S. W. 96.

Art. 486. (474) Proceedings of court to which cases have been transferred.—All cases transferred from the district court shall be entered on the docket of the court to which they are transferred; and all process thereon shall be issued, and the defendant tried, in the same manner as if the causes had originated in the court to which they have been transferred. (Acts 1876, p. 135, amended 1879.)

Art. 487. (475) (439) Cause improvidently transferred, shall be re-transferred.—When a cause has been improvidently transferred to a court which has no jurisdiction of the same, the court to which it has been transferred shall order it to be re-transferrable to the proper court; and the same proceedings shall be had as in the case of the original transfer. In such case, the defendant and the witnesses shall be held bound to appear before the court to which the case has been re-transferred, the same as they were bound to appear before the court so transferring the same.

See Moore v. S., 96 S. W. 321.

CHAPTER FOUR

OF PROCEEDINGS PRELIMINARY TO TRIAL

1. OF ENFORCING THE ATTENDANCE OF DEFENDANT AND OF FORFEITURE OF BAIL

Art. 488. (476) Bail forfeited, when.—Whenever a defendant is bound by recognizance or bail bond to appear at any term of a court, and fails to appear on the day set apart for taking up the criminal docket, or any subsequent day when his case comes up for trial, a forfeiture of his recognizance or bail bond shall be taken. (O. C. 407.)

Art. 489. (477) Manner of taking a forfeiture.—Recognizances and bail bonds are forfeited in the following manner: The name of the defendant shall be called distinctly at the door of the court house, and, if the defendant does not appear within a reasonable time after such call is made, judgment shall be entered that the state of Texas recover of the defendant the amount of money in which he is bound, and of his sureties, the amount of money in which they are respectively bound, which judgment shall state that the same will be made final, unless good cause be shown at the next term of the court why the defendant did not appear. (O. C. 408, as amended on revision, 1879.)

See ante, art. 339.

Art. 490. (478) Citation to sureties.—After the adjournment of the court at which the proceedings set forth in the last two articles have been had, a citation shall issue from the court, notifying the sureties of the defendant that the recognizance or bond has been forfeited, and requiring them to appear at the next term of the court and show cause why the same should not be made final; but it shall not be necessary to give notice to the defendant. (O. C. 409.)

See Sims v. S., 55 S. W. 179; Hodges v. S., 165 S. W. 607; Hodges v. S., 165 S. W. 613; Hemphill v. S., 170 S. W. 154; Bell v. S., 186 S. W. 328.

Generally under this chapter see Burgemeister v. S., 203 S. W. 770; Stallings v. S., 177 S. W. 132.

Art. 491. (479) (443) Requisites of citation.—A citation shall be sufficient if it contain the following requisites:

1. It shall run, "In the name of the state of Texas."

2. It shall be directed to the sheriff or any constable of the county where the surety resides or is to be found.

3. It shall state the name of the principal in such recognizance or bail bond and the names of his sureties.

4. It shall state the date of such recognizance or bail bond, and the offense with which the principal is charged.

5. It shall state that such recognizance or bail bond has been declared forfeited, naming the court before which the forfeiture was taken, the time when taken, and the amount for which it was taken against each party thereto.

6. It shall notify the surety to appear at the next term of the court and show cause why the forfeiture should not be made final.

7. It shall be signed and attested officially by the court or clerk issuing the same.

Callaghan v. S., 122 S. W. 879; Holley v. S., 157 S. W. 937; Sanders v. S., 158 S. W. 291; Hodges v. S., 165 S. W. 613; Curfman v. S., 195 S. W. 194.

Art. 492. (480) Citation shall be served and returned as in civil actions.—Sureties shall be entitled to notice by service of citation, the length of time and in the manner required in civil actions; and the officer executing the citation shall return the same in the manner provided for the return of citations in civil actions. (O. C. 412.)

See ante, Civ. St. title 30, ch. 6; Couch v. S., 122 S. W. 24; Harryman v. S., 122 S. W. 398.

Art. 493. (481) (445) Citation may be served by publication.—Where the surety is a non-resident of the state, or where he is a transient person, or where his residence is unknown, the district or county attorney may, upon application in writing to the county clerk, stating the facts, obtain a citation to be served by publication; and the same shall be served by publication and returned in the same manner as in like cases in civil actions.

See ante, Civ. St. arts. 1874, 1878.

Art. 494. (482) (446) County shall pay cost of publication.—When service of citation is made by publication, the county in which the forfeiture has been taken shall pay the costs of such publication, and the amount shall be taxed as costs in the case.

Art. 495. (483) (447) Service may be made out of the state, how.—Service of a certified copy of the citation upon any absent or non-resident surety may be made outside of the limits of this state by any person competent to make oath of the fact; and the affidavit in writing of such person, stating the facts of such service, shall be a sufficient return.

See ante. Civ. St. art. 1869 et seq.

Art. 496. (484) (448) When surety is dead, citation to legal representatives.—When the surety is dead at the time the forfeiture is taken, the forfeiture shall nevertheless be valid. But the final judgment shall not be rendered where a surety has died, either before or after the forfeiture has been taken unless his executor, administrator or heirs, as the case may be, have been cited to appear and show cause why the judgment should not be made final, in the same manner as provided in the case of the surety.

Art. 497. (485) (449) Cases shall be placed upon civil docket.—When a forfeiture has been declared upon a recognizance or bail bond, the court or clerk shall docket the case upon the civil docket, in the name of the state of Texas, as plaintiff, and the principal and his sureties, as defendant; and the proceedings had therein shall be governed by the same rules governing other civil actions.

See Morse v. S., 50 S. W. 342; Savage v. S., 148 S. W. 584; Hodges v. S., 165 S. W. 613.

Art. 498. (486) Sureties may answer at next term.—At the next term of the court, after the forfeiture of the recognizance or bond, if the sureties have been duly notified, or at the first term of the court after the service of such notice, the sureties may answer in writing and show cause why the defendant did not appear, which answer may be filed within the time limited for answering in other civil actions. (O. C. 410.)

See ante, Civ. St. arts. 1867, 1934.

Art. 499. (487) (451) Proceedings shall not be set aside for defect of form, etc.—The recognizance or bail bond, the judgment declaring the forfeiture, the citation and the return thereupon, shall not be set aside because of any defect of form; but

such defect or form may, at any time, be amended under the direction of the court.

See ante, Civ. St. arts. 1824, 1879.

Art. 500. (488) Causes which will exonerate from liability on forfeiture.—The following causes, and no other, will exonerate the defendant and his sureties from liability upon the forfeiture taken:

1. That the recognizance or bail bond is, for any cause, not a valid and binding undertaking in law; but, if it be valid and binding as to the principal, and one or more of his sureties, they shall not be exonerated from liability because of it being invalid and not binding as to another surety or sureties. If it be invalid and not binding as to the principal, each of the sureties shall be exonerated from liability. If it be valid and binding as to the principal, but not so as to the sureties, the principal shall not be exonerated, but the sureties shall be.

2. The death of the principal before the forfeiture was taken.

3. The sickness of the principal, or some uncontrollable circumstance which prevented his appearance at court, and it must, in every such case, be shown that that his failure to appear arose from no fault on his part. The causes mentioned in this subdivision shall not be deemed sufficient to exonerate the principal and his sureties, unless such principal appear before final judgment on the recognizance or bail bond to answer the accusation against him, or show sufficient cause for not so appearing.

4. Failure to present an indictment or information at the first term of the court which may be held after the principal has been admitted to bail, in case where the party was bound over before indictment or information, and the prosecution has not been continued by order of the court as provided in article 642. (O. C. 414.)

Woods v. S., 103 S. W. 895; Headley v. S., 125 S. W. 27; Williamson v. S., 150 S. W. 892; Holley v. S., 157 S. W. 937; Hodges v. S., 165 S. W. 607; Adams v. S., 193 S. W. 1067; Thodberg v. S., 194 S. W. 1108.

Art. 501. (489) Judgment final, when.—When, upon a trial of the issues presented by the answers of the sureties, no sufficient cause is shown for the failure of the principal to appear, the judgment shall be made final against him and his sureties for the amount in which they are respectively bound; and the same shall be collected by execution as in civil actions. Separate executions shall issue against each party for the amount adjudged against him, and the costs be equally divided between the sureties, if there be more than one. (O. C. 417.)

Art. 502. (490) (454) Judgment final by default, when.—When the sureties have been duly cited and fail to answer, and the principal also fails to answer within the time limited for answering in other civil actions, the court shall enter judgment final by default as in other civil actions.

See ante, art. 498.

Art. 503. (491) The court may remit, when.—If, before final judgment is entered against the bail, the principal appear or be arrested and lodged in jail of the proper county, the court may, at its discretion, remit the whole or part of the sum specified in the bond or recognizance. (O. C. 415.)

Williams v. S., 103 S. W. 929; Johnson v. S., 150 S. W. 890; Williamson v. S., 150 S. W. 892.

Art. 504. (492) Forfeiture shall be set aside, when, etc.—When the principal appears before the entry of final judgment, and sufficient cause is shown for his failure to appear before the forfeiture taken, and a trial is had of the criminal actions pending against him, he shall be entitled to have the forfeiture set aside, and the criminal action against him shall stand for trial; but the state shall not be forced to try the same until reasonable time has been allowed to prepare for trial, and the state shall, in such case, be entitled to a continuance of the cause. (O. C. 416.)

2. OF THE CAPIAS

Art. 505. (493) Definition of a "capias."—A "capias" is a writ issued by the court or clerk, and directed "To any sheriff of the state of Texas," commanding him to arrest a person accused of an offense and bring him before that court forthwith, or on a day or at a term stated in the writ. (O. C. 420.)

Art. 506. (494) Its requisites.—A capias shall be held sufficient if it have the following requisites:

1. That it run in the name of "The State of Texas."

2. That it name the person whose arrest is ordered, or, if unknown, describe him.

3. That it specify the offense of which the defendant is accused, and it appear thereby that he is accused of some offense against the penal law of the state.

4. That it name the court to which it is returnable and the time when returnable.

5. That it be dated and attested officially by the court or clerk issuing the same. (O. C. 421.)

Art. 507. (495) (459) Capias shall issue at once in all felony cases.—A capias shall be immediately issued by the clerk of the district court upon each indictment for felony presented, and shall be delivered by the clerk or forwarded by mail to the sheriff of the county where the sheriff resides or is to be found.

Art. 508. (496) (460) In misdemeanor cases.—In cases of misdemeanor, the capias shall be issued from the court having jurisdiction of the same; and, if the defendant be in custody or under bail, a capias need not be issued for him.

Art. 509. (497) (461) Capias in case of forfeiture of bail.—In all cases where a forfeiture is declared upon a recognizance or bail bond, a capias shall be immediately issued for the arrest of the defendant, and when arrested, he shall be required to enter into a new recognizance or bail bond, unless the forfeiture taken has been set aside under the third subdivision of article 488, in which case the defendant and his sureties shall remain bound under his present recognizance or bail bond.

Art. 510. (498) (462) New bail in felony case, when.—When a defendant who has been arrested for a felony under a capias has previously given bail to answer said charge, his sureties shall be released by such arrest, and he shall be required to give new bail.

See Foster v. S., 43 S. W. 80; Sanders v. S., 158 S. W. 291.

Art. 511. (499) Capias does not lose its force, etc.—A capias shall not lose its

force or virtue if not executed and returned at the time fixed in the writ, but may be executed at any time afterward, and return made; and all proceedings under such capias shall be as valid as if the same had been executed and returned within the time specified in the writ. (O. C. 423.)

Art. 512. (500) (464) Officer shall give reasons for retaining capias, when.—When the capias is not returned at the time fixed in the writ, the officer holding the same shall notify the court from whence it issued, in writing, of his reasons for retaining it.

Art. 513. (501) (465) Capias may issue to several counties.—Capiases for a defendant may be issued to as many counties as the district or county attorney may direct.

Art. 514. (502) Sheriff, etc., can not take bail in felony cases, when.—In cases of arrest for felony in the county where the prosecution is pending, during a term of the court, the sheriff, or officer making the arrest, can not take bail, but must forthwith bring the defendant before the court, that he may be dealt with according to law. (O. C. 427.)

See ante, arts. 318, 321, 337.

Art. 515. (503) Sheriff may take bail in felony cases, when.—In cases of arrest for felony less than capital, made during vacation, or made in another county than the one in which the prosecution is pending, the sheriff may take bail. In such cases, the amount of the bail shall be the same as is indorsed upon the capias; and, if no amount be indorsed upon the capias, the sheriff shall require a reasonable amount of bail. (O. C. 426, 432.)

Art. 516. (504) Court shall fix amount of bail in felony cases, etc.—In all felony cases which are bailable, the district court shall, before adjourning, fix the amount of the bail to be required in each case, and the same shall be entered upon the minutes, and, in issuing the capias, the clerk shall indorse thereon the amount of bail required; but in case of neglect to comply with either of the requirements of this article, the arrest of the defendant, and the bail bond taken by the sheriff, shall be as legal and valid as if there had been no such omission. (O. C. 424.)

Art. 517. (505) Who may arrest under capias.—A capias may be executed by any constable or other peace officer; but, in cases of felony, the defendant must be delivered forthwith to the sheriff of the county where the arrest is made, together with the writ under which he was taken, to be dealt with according to law. (O. C. 425.)

Art. 518. (506) Officer making arrest may take bail in misdemeanor, etc.—In cases of misdemeanor, any officer making an arrest under a capias may take bail of the defendant, either in term time or in vacation. (O. C. 426.)

See ante, 318, 321; post, art. 978.

Art. 519. (507) (471) Arrest in capital case, in county where prosecution is pending.—Where an arrest is made under a capias in a capital case, the sheriff shall confine the defendant in jail, and the capias shall, for that purpose, be a sufficient warrant of commitment. This article is applicable when the arrest is made in the county where the prosecution is pending.

Art. 520. (508) Arrest in capital case in another county than that in which prosecution is pending.—In every capital case where a defendant is arrested under a capias in a county other than that in which the prosecution is pending, it is the duty of the sheriff who arrests, or to whom the defendant is delivered by some other peace officer, to convey him forthwith to the county from which the capias issued and deliver him to the sheriff of such county; and, upon failure to do so, such sheriff shall be guilty of an offense. (O. C. 431.)

Art. 521. (509) Bail bond and capias must be returned, etc.—When an arrest has been made and a bail bond taken, the bail bond, together with the capias, shall be returned forthwith through the mail or by other safe conveyance to the proper court. (O. C. 422.)

See ante, art. 321.

Art. 522. (510) Defendant placed in jail in another county, etc., shall be discharged, when.—If a defendant be placed in jail out of the county of the prosecution, on a charge of felony, he shall be discharged from custody if not applied for and taken by the sheriff of the proper county before the end of sixty days from the day of his commitment. If the defendant be placed in jail on a charge of misdemeanor, he shall be discharged from custody if not applied for and taken by the sheriff of the proper county before the end of thirty days from the day of his commitment. (O. C. 434.)

Art. 523. (511) Preceding article shall not apply, where.—The preceding article shall not apply to cases where the defendant has been placed in jail out of the county of the prosecution, under the provisions of this Code, for the want of a sufficient or safe jail in the county of the prosecution. (O. C. 434.)

Art. 524. (512) (476) Return of the capias, and what it shall show.—The return of the capias shall be made to the court from which it is issued, and, if it has been executed, the return shall state what disposition has been made of the defendant. If it has not been executed, the cause of the failure to execute the same shall be fully stated; and, if the defendant has not been found, the return shall further show what efforts have been made by the officer to find him, and what information, if any, he has obtained as to the defendant's whereabouts.

3. OF WITNESSES AND THE MANNER OF ENFORCING THEIR ATTENDANCE

Art. 525. (513) Definition of "subpœna."—A "subpœna" is a writ issued to the sheriff or other proper officer commanding him to summon a person therein named to appear at a certain term of the court, or on a certain day, to testify in a criminal action, or upon any proceeding before an examining court, coroner's inquest, the grand jury, or before a judge hearing an application under habeas corpus, or in any other case in which the testimony of a witness may be required under the provisions of this Code. The writ shall be dated and signed officially by the court or clerk issuing the same, but need not be under seal. (O. C. 438.)

Art. 526. (514) (478) What it may contain.—A subpœna may contain the names

of any number of witnesses residing in the same county to which it is issued; and, if a witness have in his possession any instrument of writing or other thing desired as evidence, the subpœna may specify such evidence and direct that the witness bring the same with him and produce it in court.

Art. 526a. Application for subpœna.—Hereafter before the clerk of the district court in any county in Texas, or his deputy shall be required or permitted to issue a subpœna in any felony case filed or pending in any district court of which he is clerk or deputy, the attorney representing the defendant or the defendant himself or the district attorney or attorney representing the State shall make his application in writing to the district clerk under oath for said witnesses. Said application shall state the name of the witnesses desired, the location and vocation, if known, and that the testimony of said witnesses is believed to be material to the State or the defense; provided, however, if the defendant be not represented by an attorney, then he, the defendant, would be authorized to make application under oath for his witnesses, as above provided for. (Acts 1913, ch. 150, sec. 1.)

Art. 527. (515) (479) Service and return of subpœna.—A subpœna is served by reading the same in the hearing of the witness. The officer having the subpœna shall make due return thereof, showing the time and manner of service, if served, and, if not served, he shall show in his return the cause of his failure to serve it; and, if the witness could not be found, he shall state the diligence he has used to find him, and what information he has, if any, as to the whereabouts of the witness.

See Ex parte Terrell, 95 S. W. 536.

Art. 528. (516) Penalties for refusing to obey a subpœna.—If a witness refuse to obey a subpœna, he may be fined at the discretion of the court, as follows: In a capital case, not exceeding five hundred dollars; in a case of felony less than capital, not exceeding two hundred dollars; in a case of misdemeanor, not exceeding one hundred dollars. (O. C. 444–445.)

Art. 529. (517) Before fine is entered against witness, it must appear, etc.—Before a fine is entered against a witness for disobedience to a subpœna, it must be made to appear to the court by the oath of the defendant or some other credible person, or the statement of the attorney representing the state, that the testimony of such witness is believed to be material, either to the prosecution or defense. (O. C. 446.)

Ex parte Gould, 132 S. W. 364, 31 L. R. A. (N. S.) 835.

Art. 530. (518) What constitutes disobedience of a subpœna.—It shall be understood that a witness refuses to obey a subpœna—

1. If he is not in attendance on the court on the day set apart for taking up the criminal docket or any day subsequent thereto, and before the final disposition or continuance of the particular case in which he is a witness.

2. If he is not in attendance at any other time named in a writ.

3. If he refuses without legal cause to produce evidence in his possession which he has been summoned to bring with him and produce. (O. C. 441.)

Parshall v. S., 138 S. W. 759; Johnson v. S., 140 S. W. 347.

Art. 531. (519) Fine against witness conditional, etc.—When a fine is entered against a witness for failure to appear and testify, the judgment shall be conditional; and a citation shall issue to him to show cause, at the term of the court at which said fine is entered, or at the first term thereafter, at the discretion of the judge of said court, why the same should not be final; provided, citation shall be served upon said witness in the manner and for the length of time prescribed for citations in civil cases. (O. C. 447; amended Acts 1895, p. 95.)

See Ex parte Terrell, 95 S. W. 536.

Art. 532. (520) Witness may show cause, when and how.—A witness cited to show cause, as provided in the preceding article, may do so under oath, in writing or verbally, at any time before judgment final is entered against him; but, if he fails to show cause within the time limited for answering in civil actions, a judgment final by default shall be entered against him. (O. C. 448; Id.)

Art. 533. (521) Court may remit the whole or part of fine upon excuse made, etc.—It shall be within the discretion of the court to judge of the sufficiency of an excuse rendered by a witness, and, upon the hearing of the case, the court shall render judgment against the witness for the whole or any part of the fine, or shall remit the fine altogether, as to the court may appear proper and right, and said fine shall be collected as fines in misdemeanor cases. (O. C. 452; Id.)

Art. 534. (522) When witness appears and testifies, etc., fine may be remitted.—When a fine has been entered against a witness, but no trial of the cause takes place, and such witness afterward appears and testifies upon the trial thereof, it shall be discretionary with the judge, though no good excuse be rendered, to reduce the fine or remit it altogether; but the witness, in such case, shall, nevertheless, be adjudged to pay all the costs accruing in the proceeding against him by reason of his failure to attend. (O. C. 449.)

Art. 535. (523) Definition and requisites of an attachment.—An "attachment" is a writ issued by a clerk of a court, or by any magistrate, or by the foreman of a grand jury, in any criminal action or proceeding authorized by law, commanding some peace officer to take the body of a witness and bring him before such court, magistrate or grand jury on a day named, or forthwith, to testify in behalf of the state or of the defendant, as the case may be. It shall be dated and signed officially by the officer issuing it, and, when issued by a clerk of a court, shall be authenticated by his official seal. (O. C. 439.)

Art. 536. (524) When an attachment may be issued.—When a witness who resides in the county of the prosecution has been duly served with a subpœna to appear and testify in any criminal action or proceeding fails to so appear, the state or the defendant shall be entitled to have an attachment issued forthwith for such witness. (O. C. 436–440.)

Parshall v. S., 138 S. W. 759; Johnson v. S., 140 S. W. 347.

Art. 537. (524a) Witnesses residing in the county of the prosecution, attachment for may issue, when.—When a witness resides in the county of the prosecution, whether he has disobeyed a subpœna or not, either in term time or vacation, upon the filing of an affidavit with the clerk by the defendant or state's counsel, that he has good reason to believe, and does believe, that such witness is a material witness, and is about to move out of the county, it shall be the duty of the clerk to forthwith issue an attachment for such witness; provided, that in misdemeanor cases, when the witness makes oath that he can not give surety, the officer executing the attachment shall take his personal bond. (Acts 1897, p. 30.)

See Ex parte Sheppard, 66 S. W. 304.

Art. 538. (525a) Subpœna or attachment for witness about to move out of the county to testify before grand jury, when.—At any time before the first day of the meeting of any term of the district court in any county of this state, it shall be the duty of the clerk, upon application of the district or county attorney, to forthwith issue a subpœna for any witness who resides in the county; provided, if, at the time such application is made, the district or county attorney shall file a sworn application, that he has good reason to believe, and does believe, that such witness is about to move out of the county, then said clerk shall issue an attachment for such witness to be and appear before said district court on the first day thereof to testify as a witness before the grand jury. And any witness so summoned or attached, who shall fail or refuse to obey a subpœna or attachment, shall be punished by the court by a fine in any sum not exceeding five hundred dollars, to be collected as fines and costs in other criminal cases. (Acts 1899, p. 245.)

Art. 539. Where witness resides out of the county where prosecution is pending, defendant or state entitled to subpœna, when.—Where a witness resides out of the county in which the prosecution is pending, the defendant shall be entitled, on application, either in term time or in vacation, to the proper clerk or magistrate, to a subpœna issued to compel the attendance of such witness. Such application shall be in writing and under oath, shall state the name and residence of the witness, and his exact location and avocation, if known, and that his testimony is believed to be material to the defense. The state shall also be entitled to subpœnas, under the provisions of this article, upon the written application of the attorney representing the state, which application shall state the name and residence of the witness, and his exact location and avocation, if known, and that his testimony is believed to be material for the state. (Acts 1897, 1st S. S. p. 58, sec. 1.)

Art. 540. Duty of officer receiving said subpœna.—It shall be the duty of the officer receiving said subpœna to execute the same by delivering a copy thereof to the witness or witnesses therein named; and he shall make due return of said subpœna, showing therein the time and manner of executing the same, and, if not executed, such return shall show why not executed, the diligence used to find said witness, and such information as the officer has, if any, as to the whereabouts of said witness. (Id. p. 58, sec. 2.)

Art. 541. When subpœna is returnable forthwith, duty of officer.—When a subpœna is returnable forthwith, it shall be the duty of the officer to immediately serve the witness with copy of the same; and it shall be the duty of said witness to immediately make his appearance before the court, magistrate or other authority issuing the same; and, if said witness makes affidavit of his inability from lack of funds to appear in obedience to said subpœna, it shall be the duty of the officer executing the same to provide said witness, if said subpœna be issued in a felony case, with the necessary funds or means to appear in obedience to said subpœna, taking his receipt therefor, and showing in his return on said subpœna, under oath, the amount furnished to said witness, together with the amount of his fees for executing said subpœna; and such officer shall be entitled to receive from the state, for executing such process, the sum of fifty cents for serving each witness, and five cents per mile for each mile actually traveled in the execution of the same. (Id. p. 58, sec. 3.)

Art. 542. Duty of clerk, magistrate or foreman of grand jury issuing process.—It shall be the duty of the clerk of the court, the magistrate, or the foreman of the grand jury, issuing said process, immediately upon the return of said subpœna, if issued in a felony case, to issue to such officer a certificate for the amount furnished such witness, together with the amount of his fees for executing the same, showing the amount of each item; which certificate shall be approved by the judge of the district court, and recorded by the clerk of the district court in a well-bound book kept for that purpose; and said certificate transmitted to the officer executing such subpœna, which amount shall be paid by the state, as costs are paid in other criminal matters. (Id. p. 58, sec. 4.)

Holcomb v. S., 132 S. W. 362.

Art. 543. Subpœna returnable at some future day, duty of officer.—If the subpœna be returnable at some future date, the officer shall have authority to take a good and sufficient bail bond of such witness, for his appearance under said subpœna, which bond shall be returned with such subpœna, and shall be made payable to the state of Texas, in the amount in which the witness and his surety shall be bound and conditioned for the appearance of the witness at the time and before the court, magistrate or grand jury named in said subpœna, and shall be signed by the witness and his sureties; but, if said witness refuse to give bond, he shall be kept in custody until such time as he shall start in obedience of said subpœna, when he shall be, upon affidavit being made, provided with funds necessary to appear in obedience of said subpœna. (Id. p. 59, sec. 6.)

Art. 544. The court or magistrate issuing subpœna may direct therein amount of bond.—The court or magistrate issuing said subpœna may direct therein the amount of the bond to be required, but in case the amount is not specified, the officer may fix the amount, and, in either case, shall require good and sufficient security, to be approved by himself. (Id. p. 59, sec. 7.)

Art. 545. Witness disobeying subpœna may be fined and attached; what words shall be written or printed on face of subpœna.—If a witness refuse to obey a sub-

pœna as herein provided, he shall be fined by the court or magistrate in any sum not exceeding five hundred dollars, which fine and judgment shall be final, unless set aside after due notice, to show cause why it should not be final, which notice may immediately issue, requiring the defaulting witness to appear at once or at the next term of said court, in the discretion of the judge, to answer for such default; and the court may, in his discretion, cause to be issued at the same time an attachment for said witness, directed to the proper county, commanding the officer to whom said writ is directed, to take said witness into custody and have him before said court at the time named in said writ; in which case such witness shall receive no compensation, unless it appears to the court that such disobedience is excusable, when the witness may receive the same compensation as if he had been attached; and said fine and all costs thereon shall be collected as in criminal cases; provided, that said fine and judgment may be set aside at the same or any subsequent term of the court or in vacation for good cause shown, after the witness shall have testified or been discharged.

The following words shall be written or printed on the face of such subpœna: "A disobedience of this subpœna is punishable by fine not exceeding five hundred dollars, to be collected as fines and costs in other criminal cases." (Id. p. 59, sec. 8.)

Art. 546. (535) (499) Witness shall be released upon giving bond.—A witness who is in custody for failing to give bond shall be at once released, upon giving the bond required.

Art. 547. (536) (500) Either party may have witness recognized, etc.—Witnesses on behalf of the state or defendant may, at the request of either party, be required to enter into recognizance in an amount to be fixed by the court to appear and testify in a criminal action; but, if it shall appear to the court that any witness is unable to give security upon such recognizance, he shall be recognized without security.

See Ex parte Sheppard, 66 S. W. 304.

Art. 548. (537) (501) Personal recognizance of witness may be taken, when.—When it appears to the satisfaction of the court that personal recognizance of the witness will insure his attendance, no security need be required of him; but no bail shall be taken by any officer without security.

See Ex parte Sheppard, 66 S. W. 304.

Art. 549. (538) Recognizance or bail bond of witness may be enforced, how.—The recognizance or bail bond of a witness may be enforced against him and his sureties in the manner pointed out in this Code for enforcing the recognizance or bail bond of a defendant in a criminal action. (O. C. 437b.)

See ante, art. 488 et seq.

Art. 550. (539) Sureties can not discharge themselves after a forfeiture.—The sureties of a witness have no right, in any case, to discharge themselves by the surrender of such witness, after the forfeiture of their recognizance or bond. (O. C. 453.)

4. SERVICE OF A COPY OF THE INDICTMENT

Art. 551. (540) Copy of indictment delivered to defendant in case of felony.—In every case of felony, when the accused is in custody, or as soon as he may be arrested, it shall be the duty of the clerk of the court where an indictment has been presented, immediately to make out a certified copy of the same, and delivered such copy to the sheriff, together with a writ directed to such sheriff, commanding him forthwith to deliver such certified copy to the defendant. (O. C. 458.)

See post, art. 578; Holden v. S., 71 S. W. 600; Lightfoot v. S., 77 S. W. 792; Brewin v. S., 85 S. W. 1140; Rice v. S., 94 S. W. 1024; Keener v. S., 103 S. W. 904; Luster v. S., 141 S. W. 209; Martin v. S., 188 S. W. 1000.

Art. 552. (541) (505) Service of copy and return of writ.—Upon receipt of such writ and copy, the sheriff shall immediately deliver such certified copy of the indictment to the defendant, and return the writ to the clerk issuing the same, with his indorsement thereon, showing when and how the same was executed.

See Holden v. S., 71 S. W. 600; Luster v. S., 141 S. W. 209.

Art. 553. (542) When defendant is on bail in felony.—When the defendant, in case of felony, is on bail at the time the indictment is presented, it is not necessary to serve him with a copy, but the clerk shall deliver a copy of the same to the defendant or his counsel, when requested, at the earliest possible time. (O. C. 460.)

See Lightfoot v. S., 77 S. W. 792; Brewin v. S., 85 S. W. 1140; Rice v. S., 94 S. W. 1024.

Art. 554. (543) May demand a copy in misdemeanors.—In misdemeanors, it shall not be necessary before trial to furnish the defendant with a copy of the indictment or information; but he or his counsel may demand a copy, which shall be given at as early a day as possible. (O. C. 459.)

5. OF ARRAIGNMENT AND OF PROCEEDINGS WHERE NO ARRAIGNMENT IS NECESSARY

Art. 555. (544) No arraignment of defendant, except, etc.—There shall be no arraignment of a defendant, except upon an indictment for a capital offense. (O. C. 461.)

See Webb v. S., 55 S. W. 493.

Art. 556. (545) An arraignment; for what purpose.—An arraignment takes place for the purpose of reading to the defendant the indictment against him and hearing his plea thereto. (O. C. 462.)

Art. 557. (546) No arraignment until two days after service of copy, etc.—No arraignment shall take place until the expiration of at least two entire days after the day on which a copy of the indictment was served on the defendant, unless the right to such copy or to such delay be waived, or unless the defendant is on bail. (O. C. 463.)

Art. 558. (547) Court shall appoint counsel, when.—When the defendant is brought into court for the purpose of being arraigned, if it appear that he has no counsel and is too poor to employ counsel, the court shall appoint one or more practicing attorneys to defend him; and the counsel so appointed shall have at least one day to prepare for trial. (O. C. 466.)

See Moss v. S., 81 S. W. 46; Burden v. S., 156 S. W. 1196; Mason v. S., 168 S. W. 115.

Art. 559. (548) Name as stated in indictment.—When the defendant is arraigned, his name, as stated in the indictment, shall be distinctly called; and, unless he suggest by himself or counsel that he is not in-

dicted by his true name, it shall be taken that his name is truly set forth, and he shall not thereafter be allowed to deny the same by way of defense. (O. C. 408.)

See Henry v. S., 42 S. W. 559; Kinkead v. S., 135 S. W. 573; Goodwin v. S., 143 S. W. 939; Cresencio v. S., 165 S. W. 936; Cartier v. S., 181 S. W. 473.

Art. 560. (549) If defendant suggests different name.—If the defendant, or his counsel for him, suggest that he bears some name different from that stated in the indictment, the same shall be noted upon the minutes of the court, the indictment corrected by inserting therein the name of the defendant as suggested by himself, the style of the cause changed so to give his true name, and the cause proceed as if the true name had been first recited in the indictment. (O. C. 469.)

See Colter v. S., 51 S. W. 945; Clark v. S., 76 S. W. 573; Kinkead v. S., 135 S. W. 573; Woods v. S., 150 S. W. 633; Moreno v. S., 160 S. W. 361; Thompson v. S., 160 S. W. 685; Cresencio v. S., 165 S. W. 936; Ranols v. S., 171 S. W. 1128; Carter v. S., 181 S. W. 473; Rios v. S., 183 S. W. 151.

Art. 561. (550) If defendant refuses to give his real name.—If the defendant alleges that he is not indicted by his true name, and refuses to say what his real name is, the cause shall proceed as if the name stated in the indictment were true; and the defendant shall not be allowed to contradict the same by way of defense. (O. C. 470.)

Art. 562. (551) Where name is unknown, etc.—Where a defendant is described as a person whose name is unknown, he may have the indictment so corrected as to give therein his true name. (O. C. 471.)

Art. 563. (552) Indictment read.—The name of the accused having been called, if no suggestion, such as is spoken of in the four preceding articles, be made, or, being made, is disposed of as before directed, the indictment shall be read, and the defendant asked whether he is guilty or not, as therein charged. (O. C. 472.)

See Sims v. S., 91 S. W. 579.

Art. 564. (553) Plea of not guilty entered upon the minutes of the court.—If the defendant answer that he is not guilty, the same shall be entered upon the minutes of the court; if he refuses to answer, the plea of not guilty shall in like manner be entered. (O. C. 473.)

See post, 586-588; Noble v. S., 99 S. W. 996.

Art. 565. (554) Plea of guilty not received, unless, etc.—If the defendant plead guilty, he shall be admonished by the court of the consequences; and no such plea shall be received unless it plainly appear that he is sane, and is uninfluenced by any consideration of fear, by any persuasion or delusive hope of pardon prompting him to confess his guilt. (O. C. 474.)

See Johnson v. S., 48 S. W. 70; Hopkins v. S., 68 S. W. 986; Mays v. S., 101 S. W. 233; Childress v. S., 103 S. W. 864; Patton v. S., 136 S. W. 42; Kimball v. S., 205 S. W. 989.

Art. 566. (555) Jury shall be impaneled, when.—Where a defendant in a case of felony persists in pleading guilty, if the punishment of the offense is not absolutely fixed by law, and beyond the discretion of the jury to graduate in any manner, a jury shall be impaneled to assess the punishment, and evidence submitted to enable them to decide thereupon. (O. C. 476.)

See post, art. 582; Johnson v. S., 48 S. W. 70; Sullivan v. S., 85 S. W. 810; Woodall v. S., 126 S. W. 591; Patton v. S., 136 S. W. 42; Kelley v. S., 190 S. W. 173; Flores v. S., 190 S. W. 496.

Art. 567. (556) Same proceedings in respect to name of defendant in all cases.—The same proceedings shall be had in all cases with respect to the name of the defendant and the correction of the indictment, as provided with respect to the same in capital offenses. (O. C. 479.)

6. OF THE PLEADINGS IN CRIMINAL ACTIONS

Art. 568. (557) Indictment or information.—The primary pleading in criminal action on the part of the state is the indictment or information. (O. C. 481.)

Art. 569. (558) Defendant's pleading.—On the part of the defendant, the following are the only pleadings:

1. The motion to set aside the indictment or information.

2. A special plea setting forth one or more facts as cause why the defendant ought not to be tried upon the indictment or information presented against him.

3. An exception to the indictment or information for some matter of form or substance.

4. A plea of guilty.

5. A plea of not guilty (O. C. 482.)

Art. 570. (559) Motion to set aside indictment, etc., for what causes only.—A motion to set aside an indictment or information shall be based on one or more of the following causes, and no other:

1. That it appears by the records of the court that the indictment was not found by at least nine grand jurors, or that the information was not presented after oath made as required in article 467.

2. That some person not authorized by law was present when the grand jury were deliberating upon the accusation against the defendant, or were voting upon the same. (O. C. 483.)

See Sims v. S., 45 S. W. 705; Barber v. S., 46 S. W. 233; Carter v. S., 46 S. W. 236; Id., 48 S. W. 508; Barkman v. S., 52 S. W. 30; Moody v. S., 121 S. W. 1117; Haywood v. S., 134 S. W. 218; McGregor v. S., 201 S. W. 184.

Art. 571. (560) Motion shall be tried by judge without jury.—An issue of fact arising upon a motion to set aside an indictment or information shall be tried by the judge without a jury. (O. C. 483.)

Art. 572. (561) Only special pleas for defendant.—The only special pleas which can be heard for the defendant are:

1. That he has been convicted legally, in a court of competent jurisdiction, upon the same accusation, after having been tried upon the merits for the same offense.

2. That he has been before acquitted by a jury of the accusation against him, in a court of competent jurisdiction, whether the acquittal was regular or irregular. (O. C. 484.)

See post, art. 601; Carter v. S., 48 S. W. 508; Ford v. S., 56 S. W. 919; Powell v. S., 57 S. W. 95; Hunt v. S., 60 S. W. 965; Alexander v. S., 110 S. W. 918; Shoemaker v. S., 126 S. W. 887.

Art. 573. (562) Special plea must be verified.—Every special plea shall be verified by the affidavit of the defendant. (O. C. 485.)

Art. 574. (563) Issues of fact on special plea to be tried by jury.—All issues of fact presented by a special plea shall be tried by a jury. (O. C. 486.)

Art. 575. (564) Exceptions to the substance of an indictment.—There is no exception to the substance of an indictment or information, except—

1. That it does not appear from the face of the same that an offense against the law was committed by the defendant.

2. That it appears from the indictment or information that a prosecution for the offense is barred by a lapse of time, or that the offense was committed after the finding of the indictment.

3. That it contains matter which is a legal defense or bar to the prosecution.

4. That the indictment or information shows, upon its face, that the court trying the case had no jurisdiction thereof. (O. C. 487.)

Garner v. S., 138 S. W. 124; Ferguson v. S., 189 S. W. 271.

Art. 576. (565) Exceptions to the form of an indictment.—Exceptions to the form of an indictment or information may be taken for the following causes only:

1. That the indictment or information does not appear to have been presented in the proper court, as required by article 451 or 478.

2. The want of any other requisite or form prescribed by articles 439 and 466, except the want of the signature of the foreman of the grand jury, or in the case of an information, of the signature of the attorney representing the state. (O. C. 488.)

Day v. S., 134 S. W. 215; Matthews v. S., 160 S. W. 1185; Ferguson v. S., 189 S. W. 271.

Art. 577. (566) Motions, etc., shall be in writing.—All motions to set aside an indictment or information, all special pleas and exceptions, shall be in writing. (O. C. 489.)

Garner v. S., 138 S. W. 124.

Art. 578. (567) Two days allowed for filing written pleadings.—In all cases, the defendant shall be allowed two entire days, exclusive of all fractions of a day after his arrest, and during the term of the court, to file written pleadings. (O. C. 491, 494, 495, 496.)

See Evans v. S., 35 S. W. 169; King v. S., 56 S. W. 926; Holden v. S., 71 S. W. 600; Whitesides v. S., 71 S. W. 969; McFadin v. S., 72 S. W. 172; Lightfoot v. S., 77 S. W. 792; Counts v. S., 94 S. W. 220; Garner v. S., 138 S. W. 124; Luster v. S., 141 S. W. 209; Templeton v. S., 146 S. W. 933; Partridge v. S., 147 S. W. 234; Stephens v. S., 147 S. W. 235; Johnson v. S., 164 S. W. 833; Arrelano v. S., 198 S. W. 314.

Art. 579. (568) When defendant is entitled to service of copy of indictment, etc.—In cases where the defendant is entitled to be served with a copy of the indictment, he shall be allowed the two days' time mentioned in the preceding article to file written pleadings after such service. (O. C. 496.)

See ante, arts. 554, 557; Rice v. S., 94 S. W. 1024; Luster v. S., 141 S. W. 209; Martin v. S., 188 S. W. 1000.

Art. 580. (569) Defendant may file written pleadings at any time, etc.—The two preceding articles shall not be construed so as to preclude the defendant from filing written pleadings at any time before the case is called for trial, except in case of change of venue. (O. C. 496a.)

See post, art. 630; Lightfoot v. S., 77 S. W. 792.

Art. 581. (570) (534) Plea of guilty; how made in felony case.—A plea of guilty in a felony case must be made in open court, and by the defendant in person; and, in such case, the proceedings shall be as provided in articles 565 and 566.

Johnson v. S., 48 S. W. 70.

Art. 581a. Change of venue to enable defendant, in certain felony cases, to enter plea of guilty during vacation; process.—When in any county in this State which is located in a judicial district composed of more than one county, a party is charged with felony and the maximum punishment therefor shall not exceed fifteen years confinement in the penitentiary and the district court of said county is not in session, such party may, if he desires to enter a plea of guilty, make application to the district judge of such judicial district for a change of venue to the county in which said court is in session, and said district judge may, in term time or vacation, enter an order changing the venue of and transferring said cause to the county in which court is then in session, and the defendant may enter his plea of guilty to said charge in said district court of the county to which such venue has been changed, as under the law regarding such pleas as laid down in the Code of Criminal Procedure of the State of Texas, and such court shall have the authority to issue all processes and require the attendance of witnesses, as fully and as completely as if said cause had originated in such court. (Acts 1917, ch. 142, sec. 1.)

Art. 582. (571) (535) Plea of guilty in misdemeanor.—A plea of guilty in a case of misdemeanor may be made, either by the defendant or his counsel in open court; and, in such case, the defendant or his counsel may waive a jury, and the punishment may be assessed by the court, either upon evidence or without it, at the discretion of the court.

See Johnson v. S., 48 S. W. 70; Ex parte Jones, 80 S. W. 995.

Art. 583. (572) Any person charged with misdemeanor may plead guilty without jury in the county court at special session held for that purpose.—When any person charged with a misdemeanor in the county court shall desire to make speedy disposition of his case upon a plea of guilty, without the intervention of a jury, the county judge shall be authorized and permitted to hold a special session of the court to dispose of such cause; and, in such case, the court being in session, the county judge may hear and determine such plea of guilty, and assess the punishment in like manner as if the defendant had been convicted at a regular term; and the same shall be duly entered of record in the minutes of the court; and the same proceedings shall be had to enforce the judgment as in other cases in the county court. (Acts April 4, 1891.)

See Ex parte Cole, 101 S. W. 249; Ex parte Collins, 185 S. W. 580, in which this article is held unconstitutional.

Art. 584. (573) Plea of not guilty, how made.—The plea of not guilty may be made by the defendant or by his counsel in open court; and, in all cases where the defendant refuses to plead, the plea of not guilty shall be entered for him by the court. (O. C. 480.)

Art. 585. (574) Plea of not guilty, how construed.—The plea of "not guilty" shall be construed to be a denial of every material allegation in the indictment or information. Under this plea, evidence to establish the insanity of defendant, and every fact whatever tending to acquit him of the accusation may be introduced, except such facts as are proper for a special plea under article 572. (O. C. 497.)

Art. 586. (575) (538) Pleas of guilty and not guilty may be oral.—The plea of "guilty" and the plea of "not guilty" may be made orally, and shall be entered of record on the minutes of the court.

See ante, arts. 565, 566.

7. OF THE ARGUMENT AND DECISION OF MOTIONS, PLEAS AND EXCEPTIONS

Art. 587. (576) Motions, etc., to be heard and decided without delay.—The motion to set aside an indictment or information, and all exceptions, shall be heard together, and shall be decided without delay. (O. C. 502.)

Art. 588. (577) (540) Same subject.—The court, at its discretion, may hear and determine such pleadings as are named in the preceding article at any time before a trial upon the plea of not guilty has been entered upon, but not afterward.

See post, art. 630; Fossett v. S., 67 S. W. 322.

Art. 589. (578) (541) Defendant may open and conclude argument.—The counsel of the defendant has the right to open and conclude the argument upon all pleadings of the defendant, presented for the decision of the judge.

Lemons v. S., 128 S. W. 416.

Art. 590. (579) Special pleas setting forth matters of fact.—Such special pleas as set forth matter of fact proper to be tried by a jury shall be submitted, and tried with a plea of "not guilty." (O. C. 503.)

Art. 591. (580) Process to procure testimony on written pleadings.—Where the matters involved in any written pleading depend, in whole or in part, upon testimony, either written or verbal, and not altogether upon the record of the court, every process known to the law may be obtained, either on behalf of the state or of the defendant, for the purpose of procuring such testimony; but there shall be no delay on account of the want of the testimony, unless it be shown to the satisfaction of the court that all the means given by the law have been used to procure the same. (O. C. 503.)

Art. 592. (581) Where motion to set aside, etc., is sustained in misdemeanor.—Where the motion to set aside an indictment or information, or an exception to the same, is sustained, the defendant, in a case of misdemeanor, shall be discharged, but may be again prosecuted within the time allowed by law. (O. C. 504.)

Art. 593. (582) In cases of felony.—If the motion to set aside or the exception to the indictment in cases of felony be sustained, the defendant shall not therefore be discharged, but may be immediately recommitted by order of the court, upon motion of the attorney representing the state or without motion; and proceedings may afterward be had against him as if no prosecution had ever been commenced. (O. C. 505.)

Art. 594. (583) Shall be fully discharged, when.—Where, after the motion or exception is sustained, it is made known to the court by sufficient testimony that the offense of which the defendant is accused will be barred by limitation before another indictment can be preferred, he shall, in every case, be fully discharged. (O. C. 506.)

Lemons v. S., 128 S. W. 416.

Art. 595. (584) When exception is that no offense is charged.—If an exception to an indictment or information is taken and sustained upon the ground that there is no offense against the law charged therein, the defendant shall be discharged, unless an affidavit be filed accusing him of the commission of an offense punishable by law. (O. C. 507.)

Art. 596. (585) (548) When defendant is held by order of court, etc., shall be discharged in ten days, unless, etc.—In case the motion to set aside the indictment or the exceptions thereto are sustained, but the court refuses to discharge the defendant at the expiration of ten days from the order sustaining such motions or exceptions, the defendant shall be discharged, unless in the meanwhile complaint under oath has been made before a magistrate charging him with an offense against the law, or unless another indictment has been presented against him for such offense.

Art. 597. (586) When exception is on account of form.—When the exception to an indictment or information is merely on account of form, the same shall be amended, if decided to be defective, and the cause proceed upon such amended indictment or information. (O. C. 508.)

See ante, arts. 577, 578; Hamilton v. S., 145 S. W. 348; Matthews v. S., 160 S. W. 1185; Flores v. S., 198 S. W. 575.

Art. 598. (587) (550) Amendment of indictment or information.—Any matter of form in an indictment or information may be amended at any time before an announcement of ready for trial upon the merits by both parties, but not afterward. No matter of substance can be amended.

Wade v. S., 108 S. W. 677; Hightower v. S., 165 S. W. 184; Rutherford v. S., 169 S. W. 1157; Tulley v. S., 178 S. W. 364; Adams v. S., 192 S. W. 1067; Flores v. S., 198 S. W. 575; Patterson v. S., 205 S. W. 986.

Art. 599. (588) (551) Amendments, made how.—All amendments of an indictment or information shall be made with the leave of the court, and under its direction.

Art. 600. (589) State may except to plea, etc.—When a special plea is filed by the defendant, the state may except to its efficiency for substantial defects; and, if the exception be sustained, the plea may be amended. If the plea be not excepted to, it shall be considered that issue has been taken upon the same. (O. C. 509, 510.)

Art. 601. (590) (553) Former acquittal or conviction; when a bar and when not a bar.—A former judgment of acquittal or conviction in a court of competent jurisdiction shall be a bar to any further prosecution for the same offense, but shall not bar a prosecution for any higher grade of offense over which said court had not jurisdiction, unless such trial and judgment were had upon indictment or information, in which case, the prosecution shall be barred for all grades of the offense.

See Davis v. S., 47 S. W. 978; Funderburk v. S., 64 S. W. 1059; Bowers v. S., 71 S. W. 284; McGraw v. S., 163 S. W. 967.

Art. 602. (591) Plea of not guilty allowed where motion, etc., has been overruled.—Judgment shall, in no case, be given against the defendant where his motion, exception or plea is overruled; but he shall, in all cases, be allowed to plead not guilty.

If he refuses to plead, it shall be considered as if the plea were offered, and be noted accordingly. (O. C. 512.)

See ante, arts. 565, 586; Fossett v. S., 67 S. W. 322.

8. OF CONTINUANCE

Art. 603. (592) Continuance by operation of law, when.—Criminal actions are continued by operation of law when there is not sufficient time for trial at any particular term of a court, or where the defendant has not been arrested. (O. C. 513.)

See Francis v. S., 55 S. W. 489; Keaton v. S., 57 S. W. 1126; Gardner v. S., 59 S. W. 1115.

Art. 604. (593) (556) By consent of parties.—A criminal action may be continued by consent of the parties thereto, in open court, at any time.

Art. 605. (594) For sufficient cause shown.—A criminal action may be continued on the written application of the state or of the defendant, upon sufficient cause shown; which cause shall be distinctly and fully set forth in the application. (O. C. 514, 517, 520.)

See post, art. 692.

Art. 606. (595) First application by the state for a continuance.—It shall be sufficient, upon the first application by the state for a continuance, if the same be for the want of a witness, to state—

1. The name of the witness and his residence, if known, or that his residence is unknown.

2. The diligence which has been used to procure his attendance; and it shall not be considered sufficient diligence to have caused it to be issued, or to have applied for, a subpœna in cases where the law authorized the issuance of an attachment.

3. That the testimony of the witness is believed, by the applicant, to be material for the state. (O. C. 515.)

Art. 607. (596) Subsequent application by the state.—On any subsequent application for a continuance by the state, for the want of a witness, the application, in addition to the requirements in the preceding article, must show—

1. The facts which the applicant expects to establish by the witness, and it must appear to the court that they are material.

2. That the applicant expects to be able to procure the attendance of the witness at the next term of the court.

3. That the testimony can not be procured from any other source during the present term of the court. (O. C. 516.)

Art. 608. (597) First application by defendant for a continuance.—In the first application by the defendant for a continuance, it shall be necessary, if the same be on account of the absence of a witness, to state under oath—

1. The name of the witness and his residence, if known, or that his residence is not known.

2. The diligence which has been used to procure his attendance; and it shall not be considered sufficient diligence to have caused to be issued, or to have applied for, a subpœna, in cases where the law authorizes the issuance of an attachment.

3. The facts which are expected to be proved by the witness, and it must appear to the court that they are material.

4. That the witness is not absent by the procurement or consent of the defendant.

5. That the application is not made for delay.

6. That there is no reasonable expectation that attendance of the witness can be secured during the present term of court by a postponement of the trial to some future day of said term; and the truth of the first, or any subsequent application, as well as the merit of the ground set forth therein and its sufficiency shall be addressed to the sound discretion of the court called to pass upon the same, and shall not be granted as a matter of right; provided, that should an application for continuance be overruled, and the defendant convicted, if it appear upon the trial that the evidence of the witness or witnesses named in the application was of a material character, and that the facts set forth in said application were probably true, a new trial should be granted, and the cause continued for the term, or postponed to a future day of the same term. (O. C. 518; 1879, p. 94.)

Logan v. S., 47 S. W. 645; Myers v. S., 62 S. W. 750; Bowers v. S., 71 S. W. 284; Perez v. S., 87 S. W. 350; Hunter v. S., 129 S. W. 125; Parshall v. S., 138 S. W. 759; Giles v. S., 148 S. W. 317; Gaines v. S., 150 S. W. 199; Lewis v. S., 171 S. W. 217; Watson v. S., 191 S. W. 546; Sharp v. S., 160 S. W. 369; McCuen v. S., 170 S. W. 738; Sorrell v. S., 186 S. W. 336.

Art. 609. (598) Subsequent application by defendant.—Subsequent applications for continuance on the part of the defendant shall, in addition to the requisites in the preceding article, state also—

1. That the testimony can not be procured from any other source known to the defendant.

2. That the defendant has reasonable expectation of procuring the same at the next term of the court. (O. C. 519.)

See Myers v. S., 62 S. W. 750; Bacon v. S., 134 S. W. 690; Rose v. S., 186 S. W. 202; Steel v. S., 200 S. W. 381.

Art. 610. (599) Defendant shall swear to his application.—All applications for continuance on the part of the defendant must be sworn to by himself. (O. C. 521.)

Art. 611. (600) Written motion not necessary.—It shall not be necessary to file any written motion for continuance; the motion, based upon the written statement, may be made orally. (O. C. 522.)

Art. 612. (601) (564) Statements in application may be denied under oath, etc.—Any material fact stated, affecting diligence, in an application for a continuance may be denied by the adverse party. The denial shall be in writing, and supported by the oath of some credible person, and filed as soon as practicable after the filing of the application for a continuance.

Art. 613. (602) (565) Proceedings when denial is filed.—When a denial is filed, as provided in the preceding article, the issue shall be tried by the judge; and he shall hear testimony by affidavits, and grant or refuse continuance, according to the law and facts of the case.

Art. 614. (603) (566) No argument heard, unless, etc.—No argument shall be heard on an application for a continuance, unless requested by the judge; and, when argument is heard, the applicant shall have the right to open and conclude the same.

Art. 615. (604) Defendant in capital case entitled to bail, when, etc.—If a defendant in a capital case demand a trial, and it appears that more than one continuance has been granted to the state, and that the defendant has not before applied for a continuance, he shall be entitled to be admitted to bail, and unless it be made to appear to the satisfaction of the court that a material witness of the state had been prevented from attendance by the procurement of the defendant or some person acting in his behalf. (O. C. 524.)

Art. 616. (605) Continuance after trial commenced, when.—A continuance may be granted on the application of the state or defendant after the trial has commenced, when it is made to appear to the satisfaction of the court that by some unexpected occurrence since the trial commenced, which no reasonable diligence could have anticipated, the applicant is so taken by surprise that a fair trial can not be had, or the trial may be postponed to a subsequent day of the term. (O. C. 526.)

9. DISQUALIFICATION OF THE JUDGE

Art. 617. (606) (569) Causes which disqualify judges, etc.—No judge or justice of the peace shall sit in any case where he may be the party injured, or where he has been of counsel for the state or the accused, or where the accused or the party injured may be connected with him by consanguinity or affinity within the third degree. (Const. art. 5, sec. 11.)

See January v. S., 38 S. W. 179; Gresham v. S., 66 S. W. 845; Summerlin v. S., 153 S. W. 890; Simonds v. S., 175 S. W. 1064; Patterson v. S., 202 S. W. 88.

Art. 618. (607) Proceedings when judge of district court is disqualified.—Whenever any case or cases, civil or criminal, are pending in which the district judge is disqualified from trying the same, no change of venue shall be made necessary thereby; but the judge presiding shall immediately certify that fact to the Governor, whereupon the Governor shall designate some district judge in an adjoining district to exchange and try such case or cases, and the Governor shall notify both of said judges of such order; and it shall be the duty of said judges to exchange districts for the purpose of disposing of such case or cases, and, in case of sickness or other reasons rendering it impossible to exchange, then the parties or their counsels shall have the right to select or agree upon an attorney of the court for the trial thereof; and, in the event the district judges shall be prevented from exchanging districts and the parties and their counsels shall fail to select or agree upon an attorney of the court for the trial thereof, which fact shall be certified to the Governor by the district judge or the special judge, whereupon the Governor shall appoint a person legally qualified to act as judge in the trial of the case. (Act Aug. 15, 1876, p. 141; Acts 1879, p. 1; Acts 1897, S. S., p. 39, ch. 12; Acts 1915, p. 86, ch. 45.)

Arts. 618 and 619, revised C. C. P., 1911, appeared as arts. 570 and 571 of the Code of 1879 and as arts. 607 and 608 of the Code of 1895, and in each case are ascribed to Act Aug. 15, 1876, p. 141. The act of 1876 was amended by Acts 1879, p. 1 (see note to art. 1092, Rev. Civ. St. 1879). The amendatory act was thereafter carried into Rev. Civ. St. 1895, as arts. 1069 and 1070, but the old provision was left in the criminal statutes as above stated. In 1897 (Acts 1897, S. S. p. 39, ch. 12) arts. 1069 and 1070, Rev. Civ. St. 1895, were amended, and such amendment was carried into Rev. Civ. St. 1911, as arts. 1676 and 1677, but the old provision of 1876 was still carried in the revised C. C. P. of 1911. The legislature in 1915, amended art. 1676, Rev. Civ. St. 1911, so as to make it read as above. In view of the fact that the various amendatory acts referred to clearly supersede these obsolete provisions of the C. C. P., the old provisions (arts. 618 and 619) are eliminated, and the new provision inserted as art. 618.

Art. 618a. Record to be made where special judge is agreed on or appointed.—Whenever a special judge is agreed upon by the parties 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; and

3. That the oath prescribed by law has been duly administered to such special judge. (Acts 1876, p. 141; Acts 1897, 1st S. S., p. 39, ch. 12, sec. 1.)

The above provision was omitted from the Revised C. C. P. 1911; but in view of the decision in Berry v. S., 156 S. W. 626, and Stevens v. S., 159 S. W. 505, it is inserted here. See note under art. 618, ante.

Art. 619. (608) [Superseded.]

See art. 618 and note thereunder.

Art. 620. (609) (572) Special judge shall take oath of office.—The attorney agreed upon or appointed, as provided in the two preceding articles, shall, before he enters upon his duties as special judge, take the oath of office required by the constitution of the state; and his selection by the parties, or appointment by the governor, as the case may be, and the fact that the oath of office was administered to him shall be entered upon the minutes of the court as a part of the record of the cause; and he shall have all the power and authority of the district judge that may be necessary to enable him to conduct, try, determine and finally dispose of such cause.

See authorities under Civ. St., ante, arts. 1676, 1677; Reed v. S., 114 S. W. 834; Summerlin v. S., 153 S. W. 890.

Art. 621. (610) When judge of county court is disqualified, etc.—When the judge of the county court is disqualified in any criminal case pending in the county court, the parties interested may, by consent, appoint a proper person to try said case; and, if the parties shall fail to agree upon a special judge to try such case, on or before the third day of the term of the court at which said case may be called for trial, the county judge shall forthwith certify the facts to the governor, who shall appoint some practicing attorney to try such case. (Amended Acts 1893, p. 83; Const. art. 5, sec. 16.)

Art. 622. (610a) Special judge shall take oath.—The attorney agreed upon or appointed as provided in the preceding article shall, before he enters upon his duties as special judge, take the oath of office required by the constitution of the state; and his selection by the parties or appointment by the governor, as the case may be, and the fact that the oath of office was administered to him, shall be entered upon the minutes of the court as a part of the records of the cause; and he shall have all the power and

authority of the county judge that may be necessary to enable him to conduct, try, and finally dispose of said case. (Acts 1893, p. 83.)

Art. 623. (610b) Compensation.—A special judge selected or appointed in accordance with the preceding articles shall receive the same compensation as now provided by law for regular county judges in similar cases. (Id.)

Art. 624. (611) (574) When a justice of the peace is disqualified.—If a justice of the peace shall be disqualified from sitting in any criminal action pending before him, he shall transfer the same to the nearest justice of the peace of the county who is not disqualified to try it.

See Gill v. S., 76 S. W. 575.

Art. 625. (612) (575) What the order of transfer shall state, etc.—In the cases provided for in the two preceding articles, the order of transfer shall state the cause of the transfer and name the court to which the transfer is made, and the time and place, when and where, the parties and witnesses shall appear before such court; and the rules governing the transfer of cases from the district to inferior courts shall govern in the transfer of cases under the two preceding articles.

The words "two preceding articles" should read "preceding article." The reference was copied into the revisions of 1895 and 1911 without consideration of the fact that art. 573 of the revision of 1879 (art. 621 of revision of 1911) was amended by Acts 1893, p. 83, by substituting appointment of a substitute county judge by the parties or by the governor in place of the old provision for a transfer of the case to the district court. The amendment rendered art. 625 inapplicable to the county court, and confined its operation to justices of the peace.

10. CHANGE OF VENUE

Art. 626. (613) District judge may order change of venue on his own motion, when.—Whenever in any case of felony the district judge presiding shall be satisfied that a trial, alike fair and impartial to the accused and to the state, can not, from any cause, be had in the county in which the case is pending, he may, upon his own motion, order a change of venue to any county in his own, or in an adjoining district, stating in his order the grounds for such change of venue. (Acts 1876, p. 274; Const., art. 5, sec. 45.)

See Sims v. S., 36 S. W. 256; Grooms v. S., 50 S. W. 370; Augustine v. S., 52 S. W. 77; Nite v. S., 54 S. W. 763; Borden v. S., 62 S. W. 1064; Gray v. S., 65 S. W. 375; Ricks v. S., 87 S. W. 1036; Macklin v. S., 109 S. W. 145; Fox v. S., 109 S. W. 370; Treadway v. S., 144 S. W. 655; Mayhew v. S., 155 S. W. 191; Coffman v. S., 165 S. W. 939; Gomez v. S., 170 S. W. 711; Patterson v. S., 202 S. W. 88; Flewellen v. S., 204 S. W. 657.

Art. 627. (614) State may have change of venue, when, etc.—Whenever the district or county attorney shall represent in writing to the district court before which any felony case is pending, that, by reason of existing combinations or influences in favor of the accused, or on account of the lawless condition of affairs in the county, a fair and impartial trial as between the accused and the state can not be safely and speedily had; or whenever he shall represent that the life of the prisoner, or of any of the witnesses, would be jeopardy by a trial in the county in which the case is pending, the judge shall hear proof in relation thereto, and, if satisfied that such representation is well founded, and that the ends of public justice will be subserved thereby, he shall order a change of venue to any county in his own, or in an adjoining district. (Acts 1876, p. 274.)

Fox v. S., 109 S. W. 370.

Art. 628. (615) Change of venue; when granted on application of defendant.—A change of venue may be granted on the written application of the defendant, supported by his own affidavit and the affidavit of at least two credible persons, residents of the county where the prosecution is instituted, for either of the following causes, the truth and sufficiency of which the court shall determine:

1. That there exists in the county where the prosecution is commenced so great a prejudice against him that he can not obtain a fair and impartial trial.

2. That there is a dangerous combination against him instigated by influential persons, by reason of which he can not expect a fair trial. (O. C. 527.)

See Meyers v. S., 46 S. W. 817; Renfro v. S., 56 S. W. 1013; Macklin v. S., 109 S. W. 145; Gibson v. S., 110 S. W. 41; Williams v. S., 144 S. W. 622; Mooney v. S., 176 S. W. 52; Barnett v. S., 176 S. W. 580; Parker v. S., 196 S. W. 537; Terrell v. S., 197 S. W. 1107.

Art. 629. (616) Where jury can not be procured for trial of felony.—When an unsuccessful effort has been once made in any county to procure a jury for the trial of a felony and all reasonable means have been used, if it be made to appear to the court by the written affidavit of the attorney for the state, or any other credible person, that no jury can probably be had in that county, the court may order a change of venue, and cause the reasons therefor to be placed upon the minutes of the proceedings. (O. C. 528.)

See Sims v. S., 36 S. W. 256; Gray v. S., 65 S. W. 375.

Art. 630. (617) Application may be made before announcing ready for trial, etc.—An application for a change of venue may be heard and determined, before either party has announced ready for trial; but, in all cases before a change of venue is ordered, all motions to set aside the indictment, and all special pleas and exceptions which are to be determined by the judge, and which have been filed, shall be disposed of by the court, and, if overruled, the plea of not guilty entered. (O. C. 592.)

Goode v. S., 123 S. W. 597; McGregor v. S., 160 S. W. 711; Serrato v. S., 171 S. W. 1133; Vasquez v. S., 172 S. W. 225; Mirick v. S., 204 S. W. 222.

Art. 631. (618) Venue changed to nearest county, unless, etc.—Upon the grant of a change of venue, the criminal cause shall be removed to some adjoining county, the court house of which is nearest to the court house of the county where the prosecution is pending, unless it be made to appear to the satisfaction of the court that such nearest county is subject to some objection sufficient to authorize a change of venue in the first instance. (O. C. 530.)

Art. 632. (619) Where adjoining counties are all subject to objection, etc.—If it be shown in the application for a change of venue, or otherwise, that all the counties adjoining that in which the prosecution is pending are subject to some valid objection, the cause may be removed to such county as the court may think proper. (O. C. 531.)

See Groomes v. S., 50 S. W. 370.

Art. 632a. Change of venue in certain cases.—Any officer or member of the military forces of this state, who is indicted or sued for any injury to persons or property done while performing, or endeavoring to perform, any duty required of him by this law, shall have the right, and it is hereby made the duty of the court in which such indictment or suit is pending, upon the application of the person so indicted or sued, to remove the venue of such cause to some court of competent jurisdiction in another county not subject to the same or some other disqualification; provided, such application is supported by the affidavit of two credible persons to the effect that they have good reason to believe that the defendant can not have a fair and impartial trial before such court. (Acts 1905, p. 204, ch. 104, sec. 133.)

The above provision was omitted from the revised C. C. P. of 1911, and, in view of the decisions in Berry v. S., 156 S. W. 626, and Stevens v. S., 159 S. W. 505, is inserted in this compilation.

Art. 632b. Same subject.—In case it should appear to the judge before whose court the defendant stands charged with a violation of this Act that either the State or the defendant can not obtain a fair and impartial trial in the community, it shall be his duty to change the venue either of his own motion or on application of the attorney representing the State or defendant, said case to be transferred to an adjoining county if similar conditions do not there exist, and if similar conditions appear to exist in all the adjoining counties as those authorizing the change of venue, then the judge shall order said case transferred to a court of competent jurisdiction in some county of the State where the State and the defendant can obtain a fair and impartial trial. (Acts 1918, 4th C. S., ch. 70, sec. 2.)

For section 1 of this act, see ante, Civ. St., art. 7136a.

Art. 633. (620) (583) Application for change of venue may be controverted, how.—The credibility of the persons making affidavit for change of venue, or their means of knowledge, may be attacked by the affidavit of a credible person; and the issue thus formed shall be tried and determined by the judge, and the application granted, or refused, as the law and facts shall warrant.

Art. 634. (621) (584) Order of judge shall not be revised on appeal, unless, etc.—The order of the judge granting or refusing a change of venue shall not be revised upon appeal, unless the facts upon which the same was based are presented in a bill of exceptions prepared, signed, approved and filed at the term of the court at which such order was made.

See Wright v. S., 50 S. W. 940; Hamilton v. S., 51 S. W. 217; King v. S., 64 S. W. 245; Lax v. S., 79 S. W. 578; Wallace v. S., 81 S. W. 966; Bink v. S., 98 S. W. 863; Gibson v. S., 108 S. W. 41; Treadway v. S., 144 S. W. 655; Creed v. S., 155 S. W. 240; Luttrell v. S., 157 S. W. 157; Sharp v. S., 160 S. W. 369; Mooney v. S., 164 S. W. 828; Wyres v. S., 166 S. W. 1150; Foster v. S., 185 S. W. 1; Terrell v. S., 197 S. W. 1107; Dodd v. S., 201 S. W. 1014; Hamilton v. S., 201 S. W. 1009; Coates v. S., 203 S. W. 904.

Art. 635. (622) Clerks' duties in case of change of venue.—When an order for a change of venue has been made, the clerk of the court where the prosecution is pending shall make out a true transcript of all the orders made in the cause, and certify thereto under his official seal, and shall transmit the same, together with all the original papers in the case, to the clerk of the court to which the venue has been changed. (O. C. 532.)

Escavaille v. Stephens, 119 S. W. 842; Goode v. S., 123 S. W. 597; Biggerstaff v. S., 129 S. W. 840.

Art. 636. (623) Same subject.—The clerk shall also, in a change of venue, before transmitting the original papers, make a correct copy of the same, certifying thereto under his official seal, and retain such copy in his office, to be used in case the originals or any of them be lost. (O. C. 533.)

Escavaille v. Stephens, 119 S. W. 842.

Art. 637. (624) If defendant is on bail, shall be recognized.—When a change of venue is ordered and the defendant is on bail, he shall be required to enter into recognizance forthwith, conditioned for his appearance before the proper court at the next succeeding term thereof; or, if the court of the county to which the cause is taken be then in session, he shall be recognized to appear before said court on a day fixed, and from day to day and term to term thereafter until discharged. (O. C. 534.)

Art. 638. (625) (588) Defendant failing to give recognizance shall be kept in custody, etc.—If the defendant fails to give recognizance, as required in the preceding article, he shall be safely kept in custody by the sheriff, to be disposed of as provided in the two succeeding articles.

Art. 639. (626) If defendant be in custody.—When the venue is changed in any criminal action, if the defendant be in custody, an order shall be made for his removal to the proper county, and his delivery to the sheriff thereof before the next succeeding term of the district court of the county to which the case is to be taken, and he shall be removed by the sheriff accordingly, and delivered as directed in the order. (O. C. 535.)

Art. 640. (627) If court be in session, etc.—If the court of the county to which the case is removed be then in session, the defendant shall be removed forthwith, and delivered to the sheriff of such county. (O. C. 536.)

Art. 641. (628) (591) Witness need not again be summoned, etc.—When the venue in a criminal action has been changed, it shall not be necessary to have the witnesses therein again subpœnaed, attached or recognized, but all the witnesses who have been subpœnaed, attached or recognized to appear and testify in the cause shall be held bound to appear before the court to which the cause has been transferred, in the same manner as if there had been no such transfer.

11. OF DIMINISHING PROSECUTIONS

Art. 642. (629) Defendant in custody and no indictment presented, prosecution dismissed, unless, etc.—When a defendant has been detained in custody or held to bail for his appearance to answer any criminal accusation before the district court, the prosecution, unless otherwise ordered by the court, for good cause shown, supported by affidavit, shall be dismissed and the bail discharged, if indictment or information be not presented against such defendant at the next term of the court which is held after his commitment or admission to bail. (O. C. 537.)

See Ex parte Whitney, 60 S. W. 962; Ex parte Oakley, 114 S. W. 131; Ex parte Drane, 191 S. W. 1156.

Art. 643. (630) Prosecution may be dismissed by state's attorney, etc.—The district or county attorney may, by permission of the court, dismiss a criminal action at any time upon complying with the requirements of article 37 of this Code. (O. C. 538.)

See ante, art. 37; post, arts. 729, 730, 1118; Ex parte Park, 40 S. W. 300; Tullis v. S., 52 S. W. 83; Stevens v. S., 59 S. W. 545; Ex parte Gibson, 62 S. W. 755; Diseren v. S., 127 S. W. 1038.

TITLE 8

OF TRIAL AND ITS INCIDENTS

CHAPTER ONE

OF THE MODE OF TRIAL

Art. 644. (631) Jury the only mode of trial, when.—The only mode of trial upon issue of fact is by jury, unless in cases specially excepted. (O. C. 539.)

Art. 645. (632) (595) Jury; when of twelve, when of six.—In the district court, the jury shall consist of twelve men; in the county court and inferior courts, the jury shall consist of six men.

Petty v. S., 129 S. W. 615.

Art. 645a. Same; criminal district court of Harris county.—Said Criminal District Court of Harris County [ante, arts. 97m-97v] shall try all misdemeanor cases coming before it with six jurors instead of twelve jurors, unless a jury be waived by the defendant. (Acts 1911, ch. 67, sec. 10.)

Art. 645b. Same; Criminal District Court of Tarrant county.—Said Criminal District Court of Tarrant County shall try all misdemeanor cases coming before it with six jurors instead of twelve jurors, unless a jury be waived by the defendant. (Acts 1917, ch. 77, sec. 8.)

Art. 645c. Same; Criminal District Court of Bowie county.—Said criminal district court of Bowie County shall try all misdemeanor cases coming before it with six jurors instead of twelve jurors, unless a jury be waived by the defendant. (Acts 1918, 4th C. S., ch. 28, sec. 8; Acts 1919, 2d C. S., ch. 8, sec. 8.)

Art. 646. (633) Defendant must be personally present, etc.—In all prosecutions for felonies, the defendant must be personally present on the trial, and he must likewise be present in all cases of indictment or information for misdemeanors where the punishment or any part thereof is imprisonment in jail. (O. C. 640.)

When the above article was carried into the revision of 1911 it had been superseded by Acts 1907, p. 31, ch. 19, § 1. The revisers of 1911 overlooked the fact of supercession and incorporated the above section of the act of 1907 into the new code as art. 899 (see same article in this compilation). The new provision is the existing law of the state, in view of such decisions as Berry v. S., 156 S. W. 626, and Stevens v. S., 159 S. W. 505. Its text is as follows:

In all prosecutions for felonies, the defendant must be personally present at the trial, and he must likewise be present in all cases of indictment for misdemeanors where the punishment, or any part thereof, is imprisonment in jail; provided, that in all cases the verdict of the jury shall be received by the court and entered upon the records thereof in the absence of the defendant, when such absence on his part is wilful or voluntary, and when so received it shall have the same force and effect as if received and entered in the presence of such defendant; and when the record in the appellate court shows that the defendant was present at the commencement, or any portion of the trial, it shall be presumed in the absence of all evidence in the record to the contrary that he was present during the whole trial. (Acts 1907, p. 31, ch. 19, sec. 1, superseding art. 633, revised C. C. P. 1895.)

See Wyatt v. S., 94 S. W. 219; Killman v. S., 112 S. W. 92; Foreman v. S., 132 S. W. 937; Willis v. S., 150 S. W. 904; Brooks v. S., 179 S. W. 447.

Art. 647. (634) Defendant may appear by counsel, when, etc.—In all other cases of misdemeanor, the defendant may, by consent of the attorney representing the state, appear by counsel, and the trial may proceed without his personal presence. (O. C. 541.)

Art. 648. (635) [Superseded.]

See art. 900, post, superseding this article.

Art. 649. (636) Sureties still bound in case of mistrial.—If there be a mistrial in a case of felony, the original sureties of the defendant shall be still held bound for his appearance until they surrender him in accordance with the provisions of this Code. (O. C. 543.)

Streight v. S., 138 S. W. 742.

Art. 650. (637) Criminal docket shall be kept.—There shall be kept by each clerk of the district and county court, and by each inferior court having jurisdiction in criminal cases, a docket in which shall be set down the style of each criminal action, the file number thereof, the nature of the offense, the names of counsel and the proceedings had therein, and the date of each proceeding. (O. C. 544.)

See Blair v. S., 56 S. W. 622.

Art. 651. (638) District court shall fix a day for criminal docket.—The district court shall, on the first day of its organization at each term, fix a day for taking up the criminal docket, which shall be noted on the minutes; but, in case of failure to make such order, the criminal docket may be taken up on any day not earlier than the third day of the term. (O. C. 545.)

See Gaines v. S., 42 S. W. 385; Goodwin v. S., 143 S. W. 939.

Art. 652. (639) County court shall hold a term for criminal business.—The county court of each county shall hold a term for criminal business on the first Monday in every month, or at such other time as may have been fixed in accordance with law; but no criminal action shall be called for trial before nine o'clock a. m. of the first day of such term. (Acts 1876, p. 17, sec. 2.)

Art. 653. (640) Defendant required to plead.—In all cases less than capital, the defendant is required, when his cause is called for trial, before it proceeds further, to plead by himself or his counsel whether or not he is guilty. (O. C. 546.)

See ante, art. 569; Sims v. S., 91 S. W. 579; Mays v. S., 101 S. W. 233.

Art. 654. (641) Meaning of the term "called for trial."—By the term "called for trial" is meant the stage of the cause when both parties have announced that they are ready, or when a continuance, having been applied for, has been denied. (O. C. 547.)

See Fossett v. S., 67 S. W. 322.

CHAPTER TWO

OF THE DRAWING OF JURORS, AND OF THE SPECIAL VENIRE IN CAPITAL CASES

Art. 655. (642) Definition of a special venire.—A "special venire" is a writ issued by order of the district court, in a capital case, commanding the sheriff to summon such a number of persons, not less than thirty-six, as the court in its discretion may order, to appear before the court on a day named in the writ, from whom the jury for the trial of such case is to be selected. (O. C. 548; 1887, p. 20.)

Farrar v. S., 70 S. W. 209; Harrelson v. S., 132 S. W. 783.

Art. 656. (643) State may obtain order for special venire, etc.—When there is pending in any district court a criminal action for a capital offense, the district or county attorney may, at any time after indictment found, on motion either written or oral, obtain an order for a special venire to be issued in such case. (O. C. 548.)

Art. 657. (644) (607) Defendant may obtain special venire, when.—The defendant in a capital case may also obtain an order for a special venire at any time after his arrest upon an indictment found, upon a motion in writing, supported by the affidavit of himself or counsel, stating that he expects to be ready for the trial of his case at the present term of the court.

Art. 658. (645) (608) Order of the court; writ.—The order of the court for the issuance of the writ shall specify the number of persons required to be summoned, and the time when such persons shall attend, and the time when such writ shall be returnable; and the clerk shall forthwith issue the writ in accordance with such order.

Art. 659. (646) (609) Capital cases may be set for particular day.—A capital case may, by agreement of the parties, be set for trial or disposition for any particular day of the term with the permission of the court; or the court may, at its discretion, set a day for the trial or disposition of the same; and the day agreed upon by the parties, or fixed by the court, may be changed and some other day fixed, should the court at any time deem it advisable.

Art. 660. (647) Manner of selecting special venire.—Whenever a special venire is ordered, the clerk or his deputy, in the presence and under the direction of the judge, shall draw from the wheel containing the names of jurors, the number of names required for such special venire, and shall prepare a list of such names in the order in which they are drawn from the wheel, and attach such lists to the writ and deliver the same to the sheriff; and the cards containing such names shall be sealed up in an envelope, and shall be retained by the clerk for distribution, as herein provided. If, from the names so drawn, any of the men are impaneled on the jury and serve as many as four days, the cards containing the names of the men so serving shall be put by the clerk, or his deputy, in the box provided for that purpose, and the cards containing the names of the men not impaneled shall again be placed by the clerk, or his deputy, in the wheel containing the names of the eligible jurors. (Acts 1876, p. 82, sec. 23; amended 1907, p. 271.)

See Locklin v. S., 75 S. W. 305; Oates v. S., 86 S. W. 769; Gabler v. S., 95 S. W. 521; Gibson v. S., 110 S. W. 41; Rogers v. S., 159 S. W. 40.

Art. 660a. Same.—Whenever a special venire is ordered in counties not using the wheel system, and to which Article 660, Revised Code of Criminal Procedure of 1911 is not applicable, all the names of all the persons selected by the jury commissioners to do jury service for the term at which such venire is required shall be placed upon tickets of similar size and color of paper, and the tickets placed in a box and well shaken up; and from this box the clerk, in presence of the judge, in open court, shall draw the number of names required for such special venire, and shall prepare a list of such names in the order in which they are drawn from the box, and attach such list to the writ and deliver the same to the sheriff. (Acts 1919, ch. 37.)

Art. 661. (647a) Same.—Whenever the names of the persons selected by the jury commissioners to do jury service for the term shall have been drawn one time to answer summons to a venire facias, then the names of the persons selected by the said commissioners, and which form the special venire list, shall be placed upon tickets of similar size and color of paper, and the tickets placed in a box and well shaken up; and, from this box, the clerk, in the presence of the judge, in open court, shall draw the number of names required for further venire service, and shall prepare a list of such names, in the order in which they are drawn from the box, and attach such list to the writ, and deliver the same to the sheriff; and it shall furthermore be the duty of the clerk, and he shall prevent the name of any person from appearing more than twice on all of such lists. (Amended Acts 1905, p. 18.)

See Gabler v. S., 95 S. W. 521; Moore v. S., 95 S. W. 514; Mays v. S., 96 S. W. 329; Wallace v. S., 97 S. W. 1050; Saye v. S., 99 S. W. 551; Taylor v. S., 195 S. W. 1147; Clayton v. S., 201 S. W. 172.

Art. 661a. Special venire, how summoned.—Whenever district court shall have convened, and a day shall have been set for the trial of the different capital cases which call for a special venire, the men whose names may have been drawn to answer summons to the venire facias in the different capital cases shall be immediately notified by the sheriff to be in attendance on the court on the day and week for which they were respectively drawn to serve as veniremen for said day and week; and such notice shall be given at least one day prior to the time when such duty is to be performed, exclusive of the day of service. (Acts 1905, p. 17, amending Rev. Civ. St. 1895 by adding art. 3175a thereto.)

The above provision was omitted from the revised Code of Criminal Procedure of 1911. Though it had its being by way of amendment of Rev. Civ. St. 1895, by adding thereto, art. 3175a, it seems to relate solely to criminal matter, and it is inserted in this compilation, in view of the decisions in Berry v. S., 156 S. W. 626.

Art. 662. Not to amend or repeal chapter 1, title 7, this Code.—Nothing contained herein is to be construed as in any manner amending or repealing any part of chap-

ter 1, title 7, of the Code of Criminal Procedure. (Acts 1907, p. 272.)

Art. 663. Repeals article 661 as to counties with cities of 20,000.—Article 661 of the Code of Criminal Procedure, as amended by the act of 1905, page 18, is hereby repealed, so far as it applies to all counties of this state having a city or cities aggregating twenty thousand or more in population. (Id.)

Art. 664. Certain officers to select jurors.—That between the 1st and 15th days of August of each year, in all counties in this State having therein a city or cities containing a population aggregating twenty thousand (20,000) or more people, as shown by the United States census of date next preceding such action, the tax collector of such county or one of his deputies, together with the tax assessor of such county or one of his deputies, together with the sheriff of such county or one of his deputies, together with the county clerk of such county or one of his deputies, together with the district clerk of such county or one of his deputies, shall meet at the court house of such county and shall select from the list of qualified jurors of such county as shown by the tax lists in the tax assessor's office for the current year, the jurors for service in the district and county courts of such county for the ensuing year in the manner hereinafter provided. (Act 1907, ch. 139, § 10; Act 1911, p. 150, ch. 82, § 1, superseding part of art. 664, revised C. C. P. 1911.)

The words "hereinafter provided" have reference to arts. 5152-5158, Civ. St., and to arts. 664a and 665, post.

Art. 664a. Officer wilfully or negligently failing to perform duty, penalty.—If any of said officers shall wilfully or negligently fail to serve as herein provided, or if any of the said officers shall wilfully or negligently fail to designate one of their deputies for such service, or if, after such designation, such deputy shall wilfully or negligently fail to serve, the officer so failing to serve or to designate a deputy, or the deputy so failing to serve, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty nor more than five hundred dollars. (Acts 1907, ch. 139, sec. 10.)

Art. 665. Person putting in or taking from wheel, violating any provision of this law or failing to perform any duty, penalty.—If any person shall put into the wheel, or take from the wheel, except at the times and in the manner provided for by law, a card or cards bearing the name or names of any person, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty nor more than five hundred dollars. If any person shall violate any of the provisions of this law, or shall wilfully or negligently fail or neglect to perform any duty herein required of him, then, where no penalty is specifically imposed by the terms of this law, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than fifty nor more than five hundred dollars. (Acts 1907, p. 272.)

Art. 666. (648) (611) In case no jurors, or not a sufficient number.—When, from any cause, no jurors have been selected by the jury commissioners for the term, or when there shall not be a sufficient number of those selected to make the number required for the special venire, the court shall order the sheriff to summon a sufficient number of good and intelligent citizens who are qualified jurors in the county to make the number required by the special venire.

Delaney v. S., 90 S. W. 642; Gibson v. S., 110 S. W. 41.

Art. 667. (649) (612) Same subject.—When, from any cause, there is a failure to select a jury from those who have been summoned upon the special venire, the court shall order the sheriff to summon any number of persons that it may deem advisable for the formation of the jury.

See Bates v. S., 67 S. W. 504; Locklin v. S., 75 S. W. 305; Mays v. S., 96 S. W. 329.

Art. 668. (650) (613) Service of writ.—The sheriff or other officer executing the writ shall summon the persons whose names are upon the list attached to the writ, to be and appear before the court at the time named in such writ, which summons shall be made verbally upon the jurors in person.

Art. 669. (651) (614) Return of writ.—The officer executing the writ shall return the same promptly on or before the time it is made returnable. The return shall state the names of those who have been summoned; and, if any of those whose names are upon the list have not been summoned, the return shall state the diligence that has been used to summon them and the cause of the failure to summon them.

Art. 670. (652) Sheriff shall be instructed by court as to summoning jurors.—When the sheriff is ordered by the court to summon persons upon a special venire whose names have not been selected as provided in articles 660 and 661, the court shall, in every case caution and direct the sheriff to summon such men as have legal qualifications to serve on juries, informing him of what those qualifications are, and shall further direct him, as far as he may be able, to summon men of good character who can read and write, and such as are not prejudiced against the defendant or biased in his favor, if he knows of the existence of such bias or prejudice. (O. C. 553.)

Art. 671. (653) Copy of list of jurors shall be served on defendant, etc.—The clerk, immediately upon receiving the list of names of persons summoned under a special venire, shall make a certified copy thereof, and issue a writ commanding the sheriff to deliver such certified copy to the defendant; and such sheriff shall immediately deliver such copy to the defendant, and return the writ, indorsing thereon the manner and time of its execution. (O. C. 553.)

Ollora v. S., 131 S. W. 570; Luster v. S., 141 S. W. 209.

Art. 672. (654) One day's service of copy before trial.—No defendant in a capital case shall be brought to trial until he has had one day's service of a copy of the names of persons summoned under a special venire facias, except where he waives the right, or is on bail; and, when such defendant is on bail, he shall not be brought to trial until after one day from the time the list of persons so summoned shall have been returned to the clerk of the court in which said prosecution is pending; but the clerk shall furnish the defendant, or his counsel, a list

of the persons so summoned, upon their application therefor. (O. C. 554; Acts 1887, p. 5.)

Burries v. S., 35 S. W. 164; Foster v. S., 43 S. W. 1009; Ollora v. S., 131 S. W. 570; Luster v. S., 141 S. W. 209.

CHAPTER THREE

OF THE FORMATION OF THE JURY IN CAPITAL CASES

Art. 673. (655) In capital cases, names of jurors to be called, etc.—When any capital case is called for trial, and the parties have announced ready for trial, the names of those summoned as jurors in the case shall be called at the court house door; and such as are present shall be seated in the jury box; and such as are not present may be fined by the court a sum not exceeding fifty dollars; and, at the request of either party, an attachment may issue for any person summoned, who is not present, to have him brought forthwith before the court. (O. C. 555.)

Art. 674. (656) (619) Shall be sworn to answer questions.—When those who are present are seated in the jury box the court shall cause to be administered to them the following oath: "You, and each of you, solemnly swear that you will make true answers to such questions as may be propounded to you by the court, or under its direction, touching your service and qualification as a juror, so help you God."

Art. 675. (657) (620) Excuses heard and determined by court.—The court shall now hear and determine the excuses offered by persons summoned for not serving as jurors, if any there be; and, if an excuse offered be considered by the court sufficient, the court shall discharge the person offering it from service.

See Goodall v. S., 47 S. W. 359; Bizzell v. S., 162 S. W. 861.

Art. 676. Persons summoned as jurors may claim exemption, how and when.—That all persons summoned as jurors in any court of this State, who are exempt by statutory law from jury service, may hereafter, if they so desire to claim their exemptions, make oath before any officer authorized by law to administer oaths, or before the officers summoning such person, stating their exemptions, and file said affidavit, at any time before the convening of said court, with the clerk of said court, which shall constitute sufficient excuse without appearing in person. (Acts 1907, p. 216.)

Art. 677. (658) (621) May be excused by consent of parties.—A person summoned upon a special venire may be excused from attendance by the court at any time before he is impaneled, by consent of both parties.

Art. 678. (659) (622) Challenge to the array may be heard.—Before proceeding to try the persons summoned as to their qualifications to serve as jurors, the court shall hear and determine a challenge to the array, if any be made.

Art. 679. (660) State may challenge array, when.—The array of jurors summoned for the trial of any capital case may be challenged by the state, when it is shown that the officer summoning the jurors has acted corruptly, and has wilfully summoned jurors with a view to securing an acquittal. (O. C. 568.)

See Whittle v. S., 66 S. W. 771.

Art. 680. (661) Defendant may challenge array, when.—The defendant may challenge the array for the following causes only: That the officer summoning the jury has acted corruptly, and has wilfully summoned persons upon the jury known to be prejudiced against the defendant with a view to cause him to be convicted. (O. C. 569.)

See Arnold v. S., 40 S. W. 734; Carter v. S., 46 S. W. 236; Whittle v. S., 66 S. W. 771; White v. S., 78 S. W. 1067; Ross v. S., 118 S. W. 1034; Forester v. S., 163 S. W. 87.

Art. 681. (662) (625) Two preceding articles do not apply, when.—The two preceding articles do not apply when the jurors summoned are those who have been selected by jury commissioners. In such case, no challenge to the array is allowed.

See ante, art. 678; authorities under art. 680; Ross v. S., 118 S. W. 1034.

Art. 682. (663) (626) Challenge to the array must be in writing, etc.—All challenges to the array must be made in writing, setting forth distinctly the grounds of such challenge; and, when made by the defendant, it must be supported by his affidavit, or the affidavit of some credible person.

See Arnold v. S., 40 S. W. 734.

Art. 683. (664) (627) Judge shall decide challenge without delay.—When a challenge to an array is made, the judge shall hear evidence, and decide whether the challenge shall be sustained or not, without delay.

Art. 684. (665) (628) Proceedings when such challenge is sustained.—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 which officer's misconduct the challenge has been sustained, shall not summon any other jurors in the case.

Art. 685. (666) (629) Defendant entitled to list of persons summoned.—When a challenge to the array has been sustained, the defendant shall be entitled to service of a copy of the list of names of those summoned by order of the court, as in the first instance.

See ante, arts. 671, 672.

Art. 686. (667) (630) Court shall proceed to try qualifications of persons summoned.—When no challenge to the array has been made, or, having been made, has been overruled, the court shall proceed to try the qualifications of those who have been summoned, and who are present, to serve as jurors.

Art. 687. (668) (631) Mode of testing qualifications.—In testing the qualifications of a juror, he having first been sworn as provided in article 674, he shall be asked the following questions by the court, or under its direction:

1. Are you a qualified voter in this county and state, under the constitution and laws of this state?

2. Are you a householder in the county, or a freeholder in the state?

If the person interrogated answers the foregoing questions in the affirmative, the court shall hold him to be a qualified juror until the contrary be shown by further examination or other proof. Provided, that

his failure to pay poll tax as required by law shall not be held to disqualify him for jury service in any instance. (Amended, Acts 1903, 1st S. S. p. 16; amended, Acts 1905, p. 207.)

Art. 688. (669) (632) When held to be qualified, etc.—When a juror has been held to be qualified, he shall be passed to the parties, first to the state and then to the defendant, for acceptance or challenge.

Art. 689. (670) Two kinds of challenges.—Challenges to individual jurors are of two kinds, peremptory and for cause. (O. C. 570.)

See Ex parte Jones, 80 S. W. 995.

Art. 690. (671) A peremptory challenge.—A peremptory challenge is made to a juror without assigning any reason therefor. (O. C. 571.)

See post, arts. 691, 709, 710.

Art. 691. (672) Number of challenges in capital cases.—In capital cases, both the state and defendant shall be entitled to fifteen peremptory challenges; and, where there are more defendants than one tried together, the state shall be entitled to eight peremptory challenges for each of said defendants; and each defendant shall be entitled to eight peremptory challenges. (O. C. 572; amended, Acts 1897, p. 12.)

Art. 692. (673) A challenge for cause may be made for what reason.—A challenge for cause is an objection made to a particular juror, alleging some fact which renders him incapable or unfit to serve on the jury. It may be made for any one of the following reasons:

1. That he is not a qualified voter in the state and county, under the constitution and laws of the state; provided, that his failure to pay poll tax as required by law shall not be held to disqualify him for jury service in any instance.

2. That he is neither a householder in the county nor a freeholder in the state.

3. That he has been convicted of theft or any felony.

4. That he is under indictment or other legal accusation for theft or any felony.

5. That he is insane or has such defect in the organs of seeing, feeling or hearing, or such bodily or mental defect or disease as to render him unfit for jury service.

6. That he is a witness in the case.

7. That he served on the grand jury which found the indictment.

8. That he served on a petit jury in a former trial of the same case.

9. That he is related within the third degree of consanguinity or affinity to the defendant.

10. That he is related within the third degree of consanguinity or affinity to the person injured by the commission of the offense, or to the private prosecutor, if there be one.

11. That the juror has conscientious scruples in regard to the infliction of the punishment of death for crime.

12. That he has a bias or prejudice in favor of or against the defendant.

13. That from hearsay or otherwise there is established in the mind of the juror such a conclusion as to the guilt or innocence of the defendant as will influence him in his action in finding a verdict. For the purpose of ascertaining whether this cause of challenge exists, the juror shall first be asked whether, in his opinion, the conclusions so established will influence his verdict. If he answers in the affirmative, he shall be discharged; if he answers in the negative, he shall be further examined by the court, or under his direction, as to how his conclusion was formed, and the extent to which it will affect his action; and, if it appears to have been formed from reading newspaper accounts, communications, statements or reports or mere rumor or hearsay, and, if the juror states on oath that he feels able, notwithstanding such opinion, to render an impartial verdict upon the law and the evidence, the court, if satisfied that he is impartial, and will render such verdict, may, in its discretion, admit him as competent to serve in such case; but, if the court, in its discretion, is not satisfied that he is impartial, the juror shall be discharged.

14. That he can not read and write. This cause of challenge shall not be sustained, when it appears to the court that the requisite number of jurors who are able to read and write, can not be found in the county. (O. C. 575; amended Acts 1903, 1st S. S. p. 16; amended Acts 1905, p. 207; O. C. 575; 1876, p. 83, and 1885, p. 90.)

See Kirk v. S., 37 S. W. 440; Seef v. S., 47 S. W. 26; Keaton v. S., 49 S. W. 90; McMurray v. S., 56 S. W. 76; Wilkerson v. S., 57 S. W. 957; King v. S., 64 S. W. 245; Carter v. S., 76 S. W. 437; Poole v. S., 76 S. W. 565; Mingo v. S., 133 S. W. 882; Harris v. S., 148 S. W. 1074; Myers v. S., 160 S. W. 679; Wyres v. S., 166 S. W. 1150; Myers v. S., 177 S. W. 1167; De Arman v. S., 189 S. W. 145; Bartlett v. S., 200 S. W. 839; Collins v. S., 206 S. W. 688.

Art. 693. (674) Other evidence may be heard.—Upon a challenge for cause, the examination is not confined to the answers of the juror, but other evidence may be heard in support of or against the challenge. (O. C. 577.)

Art. 694. (675) Juror shall not be asked certain questions.—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. (O. C. 577.)

Art. 695. (676) (639) No juror shall be impaneled, when.—No juror shall be impaneled when it appears that he is subject either to the third, fourth or fifth clause of challenge in article 636, although both parties may consent.

See Poole v. S., 76 S. W. 565; Rice v. S., 107 S. W. 832.

Art. 696. (677) Names of persons summoned shall be called in their order.—In selecting the jury from the persons summoned, the names of such persons shall be called in the order in which they appear upon the list furnished the defendant; and each juror shall be tried and passed upon separately; and a person who has been summoned, but who is not present, may, upon his appearance before the jury is completed, be tried as to his qualifications and impaneled as a juror, unless challenged; but no cause shall be unreasonably delayed on account of the absence of such person. (O. C. 556–8.)

See Foster v. S., 43 S. W. 1009; Spears v. S., 56 S. W. 347; Greer v. S., 65 S. W. 1075; Rose v. S., 186 S. W. 202.

Art. 697. (678) Judge shall decide qualifications of jurors, etc.—The court is

the judge, after proper examination, of the qualifications of a juror, and shall decide all challenges without delay and without argument thereupon. (O. C. 579.)

Art. 698. (679) Oath to be administered to each juror.—As each juror is selected for the trial of the case. the following oath shall be administered to him by the court, or under its direction: "You solemnly swear that in the case of the state of Texas against A B, the defendant, you will a true verdict render, according to the law and the evidence, so help you God." (O. C. 563.)

Art. 699. (680) Court may adjourn persons summoned, etc., but jurors, when sworn, shall not separate, unless, etc.—The court may adjourn persons summoned as jurors in a capital case to any day of the term; but when jurors have been sworn in a case, those who have been so sworn shall be kept together and not permitted to separate until a verdict has been rendered, or the jury finally discharged, unless by permission of the court, with the consent of the state and the defendant, and in charge of an officer. (O. C. 605.)

See post, arts. 745, 837; Gant v. S., 116 S. W. 801; Jones v. S., 153 S. W. 897.

Art. 700. (681) (644) Persons not selected shall be discharged.—When a jury of twelve men has been completed, the other persons who may be in attendance under a summons to appear as jurors in the case shall be discharged from further attendance therein.

See Farrar v. S., 70 S. W. 209.

Art. 701. Persons summoned on special venire, challenged or excused, paid, when.—That all men summoned on special venire, and who shall have been challenged or excused from service on the trial, and who reside more than one mile distant from the court house of the county, shall be paid, out of the jury fund, one dollar for each day that he attends court on said summons; provided, further, no person shall receive pay as a special venireman and regular juror for the same day; provided, that no per diem shall, in any event, be allowed any venireman under this act, who resides within the corporate limits of the county seat, if incorporated, nor shall any per diem be allowed any venireman for more than one case the same day. (Acts 1907, p. 214.)

CHAPTER FOUR

OF THE FORMATION OF THE JURY IN CASES LESS THAN CAPITAL

Art. 702. (682) Duty of clerk when parties are ready for trial.—When the parties have announced ready for trial in a criminal action less than capital, the clerk shall write the names of all the regular jurors entered of record for that week on separate slips of paper, as near the same size and appearance as may be, and shall place the slips in a box and mix them well. (Acts 1876, p. 82, sec. 21.)

See Brogden v. S., 80 S. W. 378; Adams v. S., 99 S. W. 1015; Ellis v. S., 154 S. W. 1010.

Art. 703. (683) Same subject.—The clerk shall draw from the box, in the presence of the court, the names 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 write the names, as drawn, upon two slips of paper, and deliver one slip to the attorney for the state and the other to the defendant or his attorney. (Id. sec. 22.)

See Thurmond v. S., 35 S. W. 965; Brogden v. S., 80 S. W. 378; Hackleman v. S., 91 S. W. 591; Adams v. S., 99 S. W. 1015; Ellis v. S., 154 S. W. 1010; James v. S., 167 S. W. 727.

Art. 704. (684) (647) When other jurors to be summoned.—When there are not as many as twelve names drawn from the box, if in the district court, or, if in the county court, as many as six, the court shall direct the sheriff to summon such number of qualified persons as the court may deem necessary to complete the panel; and the names of the persons thus summoned shall be placed in the box and drawn and entered upon the slips as provided in the preceding articles.

See Sweeney v. S., 128 S. W. 390; Reynolds v. S., 160 S. W. 362.

Art. 705. (685) (648) Challenge for cause to be made, when.—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 lists of their names, delivered to the parties, if either party desire to challenge any juror for cause, the challenge shall now be made, and the proceedings in such case shall be the same as in capital cases.

See ante, arts. 692, 693; Sweeney v. S., 128 S. W. 390; Reynolds v. S., 160 S. W. 362.

Art. 706. (686) (649) When number is reduced, etc., by challenge, others to be drawn, etc.—If the number of jurors be reduced by challenge 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 placed upon the lists in place of those who have been set aside for cause.

See Thurmond v. S., 35 S. W. 965; Logan v. S., 115 S. W. 1192; Sweeney v. S., 128 S. W. 390.

Art. 707. (687) (650) Cause for challenge same as in capital cases, except, etc.—The challenges for cause in all criminal actions are the same as provided in capital cases in article 692, except cause 11 in said article, which is applicable to capital cases only.

See ante, arts. 692, 693.

Art. 708. (688) (651) Peremptory challenge to be made, when.—When a juror has been challenged and set aside for cause, his name shall be erased from the lists furnished the parties, and when there are twelve names remaining on the lists not subject to challenge for cause, 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.

Art. 709. (689) In felonies not capital, number of challenges.—In prosecutions for felonies not capital, the defendant and state shall each be entitled to ten peremptory challenges; and, where more defendants than one are tried together, each defendant shall be entitled to five peremptory challenges, and the state to five, for each defendant. (O. C. 573; amended, Acts 1897, p. 13.)

Art. 710. (690) In misdemeanors.—In misdemeanors tried in the district court, the state and defendant shall be each entitled to five peremptory challenges; if tried in the county court, the state and defendant shall be each entitled to three peremptory challenges; and, if there are more defendants than one tried together, each defendant shall be entitled to three peremptory challenges in either court. (O. C. 574.)

Art. 711. (691) Manner of making peremptory challenge.—The manner of making a peremptory challenge shall be as follows: The party desiring to challenge a juror or jurors peremptorily shall erase the name or names of such juror or jurors from the list furnished him by the clerk, and the party may erase any number of names not exceeding the number of peremptory challenges allowed him by law. (Acts 1876, p. 82.)

Art. 712. (692) Lists shall be returned to clerk, when.—When the parties have made their peremptory challenges, as provided in the preceding article, or when they decline to make any, they shall deliver their lists to the clerk; and the clerk shall, if the case be in the district court, call off the first twelve names on the lists that have not been erased; and, if the case be in the county court, he shall call off the first six names on the lists that have not been erased; and the persons whose names are called shall be sworn as jurors to try the case. (Id.)

Art. 713. (693) (656) When jury is left incomplete, court shall direct, etc.—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 other jurors as are had in the first instance.

See ante, art. 706.

Art. 714. (694) Oath to be administered to jurors.—When the jury has been selected, the following oath shall be administered to them by the court, or under its direction: "You, and each of you, solemnly swear that in the case of the state of Texas against A B, the defendant, you will a true verdict render according to the law and the evidence, so help you God." (O. C. 563.)

See ante, art. 698; Ewing v. S., 38 S. W. 618; Howard v. S., 192 S. W. 770, L. R. A. 1917D, 391.

Art. 715. (695) (658) When there are no regular jurors, court shall order jurors to be summoned.—When, from any cause, there are no regular jurors for the week from whom to select a jury, the court shall order the sheriff to summon forthwith such number of qualified persons as it may deem sufficient; and, from those summoned, a jury shall be formed, as provided in the preceding articles of this chapter.

See ante, arts. 666, 667; Arnold v. S., 40 S. W. 734; Lenert v. S., 63 S. W. 563; White v. S., 78 S. W. 1067; Green v. S., 110 S. W. 920, 22 L. R. A. (N. S.) 706; Schuh v. S., 124 S. W. 908; Kosmoroski v. S., 127 S. W. 1056; Columbo v. S., 145 S. W. 910; Cox v. S., 158 S. W. 560; Branch v. S., 165 S. W. 605; Bruce v. S., 173 S. W. 301; Fitzgerald v. S., 198 S. W. 315.

Art. 716. (696) (659) Array may be challenged as in capital cases.—The array of jurors may be challenged by either party for the causes and in the manner provided in capital cases, and the proceedings in such case shall be the same.

See ante, arts. 678, 684.

CHAPTER FIVE

OF THE TRIAL BEFORE THE JURY

Art. 717. (697) Order of proceeding in trial.—A jury having been impaneled in any criminal action, the cause shall proceed to trial in the following order:

1. The indictment or information shall be read to the jury by the district or county attorney.

2. The special pleas, if any, shall be read by the defendant's counsel, and if the plea of not guilty is also relied upon, it shall also be stated.

3. The district attorney, or the counsel prosecuting in his absence, shall state to the jury the nature of the accusation and the facts which are expected to be proved by the state in support thereof.

4. The testimony on the part of the state shall be introduced.

5. The nature of the defenses relied upon shall be stated by the counsel of the defendant, and what are the facts expected to be proved in their support.

6. The testimony on the part of the defendant shall be offered.

7. Rebutting testimony may be offered on the part of the state and of the defendant. (O. C. 580.)

See Robinson v. S., 57 S. W. 812; Hearne v. S., 58 S. W. 1009; Poole v. S., 76 S. W. 566; Meyer v. S., 41 S. W. 632; Owen v. S., 105 S. W. 513; Essary v. S., 111 S. W. 927; Reeves v. S., 168 S. W. 860; House v. S., 171 S. W. 206; Himmelfarb v. S., 174 S. W. 586; White v S., 181 S. W. 192; Bell v. S., 190 S. W. 732; Messenger v. S., 198 S. W. 330; Herndon v. S., 198 S. W. 788; Dugan v. S., 199 S. W. 616.

Art. 718. (698) Testimony allowed at any time before argument.—The court shall allow testimony to be introduced at any time before the argument of a cause is concluded, if it appear that it is necessary to a due administration of justice. (O. C. 581.)

See Garza v. S., 49 S. W. 103; Rogers v. S., 50 S. W. 338; Lockett v. S., 55 S. W. 336; Toler v. S., 56 S. W. 917; Foreman v. S., 57 S. W. 843; Pool v. S., 103 S. W. 892; Beeson v. S., 130 S. W. 1006; Spates v. S., 138 S. W. 393; Bailey v. S., 141 S. W. 224; Welch v. S., 147 S. W. 572; White v. S., 150 S. W. 609; Montgomery v. S., 151 S. W. 813; Pierce v. S., 154 S. W. 559; Decker v. S., 154 S. W. 566; Anderson v. S., 157 S. W. 150; Reynolds v. S., 160 S. W. 362; Burnett v. S., 165 S. W. 581; Raleigh v. S., 168 S. W. 1050; De Lerosa v. S., 170 S. W. 312; Martin v. S., 189 S. W. 264; Spence v. S., 189 S. W. 269.

Art. 719. (699) Witnesses placed under rule.—At the request of either party, the witnesses on both sides may be sworn and placed in the custody of an officer and removed out of the court room to some place where they can not hear the testimony as delivered by any other witness in the cause. This is termed placing witnesses under rule. (O. C. 582.)

Art. 720. (700) Witnesses under rule kept separate, or, etc.—When witnesses are placed under rule, those summoned for the prosecution may be kept separate from those summoned for the defense, or they may all be kept together, as the court shall direct. (O. C. 583.)

Art. 721. (701) (664) Part of witnesses may be placed under rule.—The party requesting the witnesses to be placed under rule may designate such as he desires placed under rule, and those not designated

will be exempt from the rule, or the party may have all the witnesses in the case placed under rule.

Art. 722. (702) (665) When under rule, shall be attended by an officer.—Witnesses under rule shall be attended by an officer and all their reasonable wants provided for, unless the court, in its discretion, directs that they be allowed to go at large; but in no case where the witnesses are under rule shall they be allowed to hear the testimony in the case or any part thereof.

Art. 723. (703) (666) Shall be instructed by the court, etc.—Witnesses, when placed under rule, shall be instructed by the court that they are not to converse with each other or with any other person about the case, except by permission of the court, and that they are not to read any report of or comment upon the testimony in the case while under rule; and the officer who attends the witnesses shall report to the court at once any violation of its instructions; and the party violating the same shall be punished for contempt of court.

Art. 724. (704) Order of argument.—When a criminal cause is to be argued, the order of argument may be regulated by the presiding judge; but, in all cases, the state's counsel shall have the right to make the concluding address to the jury. (O. C. 585.)

Art. 725. (705) In prosecutions for felony.—In prosecutions for felony, the court shall never restrict the argument to a less number of addresses than two on each side. (O. C. 586.)

See Patterson v. S., 60 S. W. 560; Zyman v. S., 60 S. W. 670; Wilson v. S., 72 S. W. 862; Jenkins v. S., 131 S. W. 542.

Art. 726. (706) Defendant's right to sever on trial.—When two or more defendants are jointly prosecuted, they may sever in the trial upon the request of either. (O. C. 587; Acts 1874, p. 28; Acts 1883, p. 9.)

See Terry v. S., 76 S. W. 928; Terrell v. S., 197 S. W. 1107.

Art. 727. (707) Same subject.—Where two or more defendants are prosecuted for an offense growing out of the same transaction, by separate indictments, either defendant may file his affidavit in writing that one or more parties are indicted for an offense growing out of the same transaction, for which he is indicted, and that the evidence of such party or parties is material for the defense of the affiant, and that the affiant verily believes that there is not sufficient evidence against the party or parties whose evidence is desired to secure his or their conviction, such party or parties for whose evidence said affidavit is made shall first be tried; and, in the event that two or more defendants make such affidavit and can not agree as to their order of trial, then the presiding judge shall direct the order in which the defendants shall be tried; provided, that the making of such affidavit does not, without other sufficient cause, operate as a continuance to either party. (Acts 1887, p. 33.)

See Brown v. S., 58 S. W. 131; Stevens v. S., 59 S. W. 545; Brooks v. S., 60 S. W. 53; Rocha v. S., 63 S. W. 1018; Ray v. S., 64 S. W. 1057; Locklin v. S., 75 S. W. 306; Terry v. S., 76 S. W. 928; Manor v. S., 77 S. W. 786; Hobbs v. S., 112 S. W. 308; Anderson v. S., 120 S. W. 462; Day v. S., 138 S. W. 123; Burton v. S., 146 S. W. 186; Millner v. S., 169 S. W. 899; Zweig v. S., 171 S. W. 747; Howard v. S., 184 S. W. 505; Marta v. S., 193 S. W. 323; Clark v. S., 194 S. W. 157; Terrell v. S., 197 S. W. 1107; Ligon v. S., 198 S. W. 787; Young v. S., 206 S. W. 529.

Art. 728. (708) (670) Order in which they will be tried, etc.—When a severance is claimed, the defendants may agree upon the order in which they are to be tried, but, in case of their failure to agree, the court shall direct the order of trial. (Acts 1883, p. 9.)

Hobbs v. S., 112 S. W. 308.

Art. 729. (709) May dismiss as to one who may be witness.—The attorney representing the state may, at any time, under the rules provided in article 37, dismiss a prosecution as to one or more defendants jointly indicted with others; and the person so discharged may be introduced as a witness by either party. (O. C. 588.)

See ante, arts. 36, 643; Ex parte Park, 40 S. W. 300; Brown v. S., 58 S. W. 131; Hobbs v. S., 112 S. W. 308; Hughes v. S., 136 S. W. 1068; Streight v. S., 138 S. W. 742.

Art. 730. (710) Where there is no evidence against a defendant jointly prosecuted.—When it is apparent that there is no evidence against a defendant in any case where he is jointly prosecuted with others, the jury may be directed to find a verdict as to such defendant; and, if they acquit, he may be introduced as a witness in the case. (O. C. 589.)

See Walker v. S., 72 S. W. 401.

Art. 731. (711) Where it appears the court has no jurisdiction.—Where it appears in the course of a trial that the court has no jurisdiction of the offense, or that the facts charged in the indictment do not constitute an offense, the jury shall be discharged. (O. C. 590.)

Art. 732. (712) In such case court may commit, when.—If the want of jurisdiction arises from the fact that the defendant is not liable to prosecution in the county where the indictment was presented, the court may, in cases of felony, order the defendant into custody for a reasonable length of time to await a warrant for his arrest from the proper county; or, if the offense be bailable, may require the defendant to enter into recognizance to answer before the proper court; in which case, a certified copy of the recognizance shall be transmitted forthwith to the clerk of the proper court to be enforced by that court in case of forfeiture as in other cases. (O. C. 591.)

Art. 733. (713) Defendant shall be discharged in all cases, when.—In all cases where it appears that the facts charged in the indictment or information do not constitute an offense, and in all cases of misdemeanor where it appears that the court has no jurisdiction of the same, and the jury is discharged, as provided in article 731, the defendant shall also be discharged; but such discharge shall be no bar in any case to a prosecution before the proper court for any offense against the law. (O. C. 590–592.)

See ante, arts. 594, 595.

Art. 734. (714) The jury are judges of fact.—The jury are the exclusive judges of the facts in every criminal cause, but not of the law in any case. They are bound to receive the law from the court and be governed thereby. (O. C. 593.)

See post, art. 786; Christensen v. S., 128 S. W. 616; Smith v. S., 146 S. W. 896; Norwood v. S., 192 S. W. 248; Johnson v. S., 200 S. W. 832.

Art. 735. (715) Charge of court to the jury.—In all felony cases the judge shall, before the argument begins, deliver to the jury, a written charge, in which he shall distinctly set forth the law applicable to the case; but he shall not express any opinion as to the weight of the evidence nor shall he sum up the testimony. Before said charge is read to the jury, the defendant or his counsel shall have a reasonable time to examine the same and he shall present his objections thereto in writing, distinctly specifying each ground of objection. (O. C. 594; Acts 1913, p. 278, ch. 138, sec. 1.)

See Winfrey v. S., 56 S. W. 921; Blanco v. S., 57 S. W. 829; Chapman v. S., 57 S. W. 965; Abbott v. S., 57 S. W. 98; Murphy v. S., 57 S. W. 967; Falks v. S., 58 S. W. 98; Cooper v. S., 85 S. W. 1060; Dobbs v. S., 100 S. W. 946; Woodall v. S., 126 S. W. 591; Dowling v. S., 140 S. W. 224; Powdrill v. S., 155 S. W. 231; Dennis v. S., 158 S. W. 1008; Minter v. S., 159 S. W. 286; Wright v. S., 163 S. W. 976; Ybarra v. S., 164 S. W. 10; Roberts v. S., 168 S. W. 100; Crossett v. S., 168 S. W. 548; Terrell v. S., 174 S. W. 1088; Galan v. S., 177 S. W. 124; Abrigo v. S., 178 S. W. 518; Woodruff v. Deshazo, 181 S. W. 250; Johnson v. S., 193 S. W. 674; Furr v. S., 194 S. W. 395; Barrios v. S., 204 S. W. 326; Borrer v. S., 204 S. W. 1003; Gill v. S., 208 S. W. 926.

Art. 736. (716) Charge shall not discuss the facts, etc.—It is beyond the province of a judge sitting in criminal causes to discuss the facts or use any argument in his charge calculated to rouse the sympathy or excite the passion of a jury. It is his duty to state plainly the law of the case (O. C. 595.)

See Chapman v. S., 57 S. W. 965; Minter v. S., 159 S. W. 286; McGaughey v. S., 169 S. W. 287.

Art. 737. (717) Either party may ask written instructions.—Before the court reads his charge to the jury, counsel on both sides shall have a reasonable time to present written instructions and ask that they be given to the jury. The court shall give or refuse these charges with or without modification, and certify thereto; and, when the court shall modify a charge it shall be done in writing and in such manner as to clearly show what the modification is. (O. C. 596; Acts 1913, p. 278, ch. 138, sec. 2.)

See Osborne v. S., 56 S. W. 53; Brownlee v. S., 87 S. W. 1153; Giles v. S., 148 S. W. 317.

Art. 737a. Correction of charge after objections thereto; no further charge after argument begins, except, etc.; review.—After the judge shall have received the objections to his main charge, together with any special charges offered he may make such changes in his main charge as he may deem proper, and the defendant or his counsel shall have the opportunity to present their objections thereto and in the same manner as is provided in Article 735, and thereupon the judge shall read his charge to the jury as finally written, together with any special charges given. After the argument begins no further charge shall be given to the jury unless required by the improper argument of counsel or the request of the jury, or unless the judge shall in his discretion, permit the introduction of other testimony, and in the event of such further charge the defendant or his counsel shall have the right to present objections in the same manner as is prescribed in Article 735. Provided that the failure of the court to give the defendant or his counsel a reasonable time to examine the charge and specify the ground of objection shall be subject to review either in the trial court or in the Appellate Court. (Acts 1913, p. 278, ch. 138, sec. 3.)

Art. 738. (718) Charges shall be certified by judge.—The general charge given by the court, as well as those given or refused at the request of either party, shall be certified by the judge, and filed among the papers in the cause, and shall constitute a part of the record of the cause. (O. C. 595.)

See Logan v. S., 48 S. W. 575; Flores v. S., 53 S. W. 346; Jones v. S., 85 S. W. 1076; Christensen v. S., 128 S. W. 616; Britton v. S., 133 S. W. 885; Shetters v. S., 147 S. W. 582.

Art. 739. (719) No charge in misdemeanor, except, etc.—In criminal actions for misdemeanor, the court is not required to charge the jury, except at the request of the counsel on either side; but, when so requested, shall give or refuse such charges, with or without modification, as are asked in writing. (O. C. 598.)

See Murray v. S., 44 S. W. 830; Bush v. S., 70 S. W. 550; Brownlee v. S., 87 S. W. 1153; Garrison v. S., 114 S. W. 128; Willingham v. S., 136 S. W. 470; Noland v. S., 140 S. W. 100; Giles v. S., 148 S. W. 317; Brown v. S., 166 S. W. 508; Sloan v. S., 170 S. W. 156; Teem v. S., 183 S. W. 1144.

Art. 740. (720) (682) No verbal charge, except, etc.—No verbal charge shall be given in any case whatever, except in cases of misdemeanor, and then only by consent of the parties.

See Rumage v. S., 55 S. W. 64; Edwards v. S., 69 S. W. 144; Garrison v. S., 114 S. W. 128; Christensen v. S., 128 S. W. 616; Pecht v. S., 192 S. W. 243.

Art. 741. (721) Judge shall read to jury, what.—When charges are asked, the judge shall read to the jury only such as he gives. (O. C. 600.)

See Christensen v. S., 128 S. W. 616.

Art. 742. (722) Jury may take charge with them.—The jury may take with them, in their retirement, the charges given by the court after the same have been filed; but they shall not be permitted to take with them any charge, or portion of a charge, that has been asked of the court and which the court has refused to give. (O. C. 601.)

See Camp v. S., 57 S. W. 97.

Art. 743. (723) Judgment not to be reversed unless error prejudicial, etc.—Whenever it appears by the record in any criminal action upon appeal of the defendant that any of the requirements of the nine preceding articles [arts. 735–742] have been disregarded, the judgment shall not be reversed unless the error appearing from the record was calculated to injure the rights of the defendant, or unless it appears from the record that the defendant has not had a fair and impartial trial, and all objections to the charge, and on account of refusal or modification of special charges shall be made at the time of the trial. (O. C. 602; Acts 1897, p. 17; Acts 1913, p. 278, ch. 138, sec. 4.)

See Pena v. S., 42 S. W. 991; Magee v. S., 43 S. W. 512; Lucas v. S., 44 S. W. 825; Godwin v. S., 46 S. W. 226; Wright v. S., 48 S. W. 191; Still v. S., 50 S. W. 355; Gamble v. S., 50 S. W. 458; Becker v. S., 50 S. W. 949; Ford v. S., 51 S. W. 935; Bruce v. S., 51 S. W. 954; Spears v. S., 56 S. W. 347; O'Docharty v. S., 57 S. W. 657; Johnson v. S., 58 S. W. 69; Bell v. S., 58 S. W. 71; Barnett v. S., 62 S. W. 766; Young v. S., 66 S. W. 567; Ramirez v. S., 66 S. W. 1101; Murphy v. S., 67 S. W. 108; Rambo v. S., 69 S. W. 163; White v. S., 72 S. W. 173; Windom v. S., 72 S. W. 193; Cubine v. S., 74 S. W. 39; Hofheintz v. S., 74 S. W. 310; Woods v. S., 75 S. W. 37; Monson v. S., 76 S. W. 570; Leach v. S., 77 S. W. 220; Licett v. S., 79 S. W. 33; Williams v. S., 81 S. W. 36; Palmer v. S., 83 S. W. 202; Wilcher v. S., 83 S. W. 384; Martin v. S., 83 S. W. 390; Sullivan v. S., 85 S. W.

810; Jones v. S., 85 S. W. 1075; Bollen v. S., 86 S. W. 1025; Ruiz v. S., 88 S. W. 808; Bonura v. S., 98 S. W. 267; Ham v. S., 98 S. W. 875; Reyes v. S., 102 S. W. 421; Glascow v. S., 100 S. W. 933; Jackson v. S., 103 S. W. 927; Sue v. S., 105 S. W. 804; White v. S., 106 S. W. 1167; Williams v. S., 110 S. W. 63; Jones v. S., 110 S. W. 741, 126 Am. St. Rep. 776; Keye v. S., 111 S. W. 400; Cornelius v. S., 112 S. W. 1050; Flemister v. S., 116 S. W. 55; Tate v. S., 116 S. W. 604; Jones v. S., 116 S. W. 1147; Bice v. S., 117 S. W. 163; Field v. S., 117 S. W. 806; Raines v. S., 119 S. W. 93; Wright v. S., 120 S. W. 458; Johnson v. S., 120 S. W. 1000; Gracy v. S., 121 S. W. 705; Benevidas v. S., 121 S. W. 1107; Phillips v. S., 121 S. W. 1110; Grant v. S., 127 S. W. 173; Thorp v. S., 129 S. W. 607, 29 L. R. A. (N. S.) 421; Mosley v. S., 135 S. W. 148; Hopkins v. S., 135 S. W. 553; White v. S., 135 S. W. 562; Williams v. S., 137 S. W. 687; Miller v. S., 138 S. W. 113; Frazier v. S., 138 S. W. 620; Alexander v. S., 138 S. W. 721; Burton v. S., 138 S. W. 1019; Hickey v. S., 138 S. W. 1051; Leech v. S., 139 S. W. 1147; Noland v. S., 140 S. W. 100; Dowling v. S., 140 S. W. 224; Conger v. S., 140 S. W. 1112; Davis v. S., 141 S. W. 93; Villa v. S., 141 S. W. 104; Jones v. S., 141 S. W. 953; Ryan v. S., 142 S. W. 878; Kinney v. S., 144 S. W. 257; Treadway v. S., 144 S. W. 655; Knight v. S., 144 S. W. 967; Mitchell v. S., 144 S. W. 1006; Mealer v. S., 145 S. W. 353; Gowans v. S., 145 S. W. 614; Lott v. S., 146 S. W. 544; Washington v. S., 147 S. W. 276; Welch v. S., 147 S. W. 572; Shetters v. S., 147 S. W. 582; Giles v. S., 148 S. W. 317; Summers v. S., 148 S. W. 774; Woods v. S., 150 S. W. 633; Robertson v. S., 150 S. W. 893; Giles v. S., 150 S. W. 907; Bailey v. S., 150 S. W. 915; Love v. S., 150 S. W. 920; Byrd v. S., 151 S. W. 1063; Crutchfield v. S., 152 S. W. 1053; Martinez v. S., 153 S. W. 886; Powdrill v. S., 155 S. W. 231; Bailey v. S., 155 S. W. 536; Johnson v. S., 156 S. W. 1164; Dennis v. S., 158 S. W. 1008; Nobles v. S., 158 S. W. 1133; Ross v. S., 159 S. W. 1063; Pinkerton v. S., 160 S. W. 87; Blackburn v. S., 160 S. W. 687; Johnson v. S., 160 S. W. 964; Christian v. S., 161 S. W. 101; Davis v. S., 163 S. W. 442; Graham v. S., 163 S. W. 726; Wright v. S., 163 S. W. 976; Ybarra v. S., 164 S. W. 10; Lane v. S., 164 S. W. 378; Brown v. S., 166 S. W. 508; Forward v. S., 166 S. W. 725; Williamson v. S., 167 S. W. 360; Carey v. S., 167 S. W. 366; Crossett v. S., 168 S. W. 548; McGaughey v. S., 169 S. W. 287; Echols v. S., 170 S. W. 786; Hicks v. S., 171 S. W. 755; Maddox v. S., 173 S. W. 1026; Dillard v. S., 177 S. W. 99; Galan v. S., 177 S. W. 124; Vinson v. S., 179 S. W. 574; Clayton v. S., 180 S. W. 1089; Wilson v. S., 189 S. W. 1071; Johnson v. S., 193 S. W. 674; Davis v. S., 196 S. W. 520; Fisher v. S., 197 S. W. 189; Grider v. S., 198 S. W. 579; Hamilton v. S., 200 S. W. 155; Price v. S., 202 S. W. 948; Barrios v. S., 204 S. W. 326; Borrer v. S., 204 S. W. 1003; Gill v. S., 208 S. W. 926.

Art. 744. (724) Bill of exceptions.—On the trial of any criminal action, the defendant, by himself or counsel, may tender his bill of exceptions to any decision, opinion, order or charge of the court or other proceedings in the case; and the judge shall sign such bill of exceptions, under the rules prescribed in civil suits, in order that such decision, opinion, order or charge may be revised upon appeal. (O. C. 603.)

See Harper v. S., 55 S. W. 178; McKenney v. S., 55 S. W. 341; Cain v. S., 59 S. W. 275; Munoz v. S., 60 S. W. 760; Culver v. S., 62 S. W. 922; Owens v. S., 63 S. W. 634; Taylor v. S., 138 S. W. 615; Hickey v. S., 138 S. W. 1051; Kearse v. S., 151 S. W. 827; Davis v. S., 196 S. W. 520; Sessions v. S., 197 S. W. 718; Alexander v. S., 199 S. W. 292; Anselmo v. S., 200 S. W. 523; Haverbekken v. S., 200 S. W. 524; Parker v. S., 200 S. W. 1083; Moore v. S., 203 S. W. 51; Perez v. S., 206 S. W. 192.

Art. 745. (725) Jury in felony case shall not separate until, unless, etc.—After the jury has been sworn and impaneled to try any case of felony, they shall not be permitted to separate until they have returned a verdict, unless by permission of the court, with the consent of the attorney representing the state and the defendant, and in charge of an officer. (O. C. 695.)

See McCampbell v. S., 40 S. W. 496; Jones v. S., 83 S. W. 198; Gant v. S., 116 S. W. 801; Robinson v. S., 126 S. W. 276; Jones v. S., 153 S. W. 897; Eads v. S., 170 S. W. 145; Latham v. S., 172 S. W. 797; Coffey v. S., 198 S. W. 326; Watson v. S., 199 S. W. 1113.

Art. 746. (726) (688) In misdemeanor case jury may separate.—In case of misdemeanor, the court may, at its discretion, permit the jury to separate before the verdict, after giving them proper instructions in regard to their conduct as jurors in the case while so separated.

Art. 747. (727) Sheriff may provide jury with, etc.—It is the duty of the sheriff to provide a suitable room for the deliberation of the jury, in all criminal cases, and to supply them with such necessary food and lodging as he can obtain; but no spirituous, vinous or malt liquor of any kind shall be furnished them. (O. C. 606.)

Art. 748. (728) No person shall be with jury or permitted to converse with them, etc.—No person shall be permitted to be with a jury while they are deliberating upon a case, nor shall any person be permitted to converse with a juror after he has been impaneled, except in the presence and by the permission of the court, or except in a case of misdemeanor where the jury have been permitted by the court to separate; and in no case shall any person be permitted to converse with the juror about the case on trial. (O. C. 607.)

See Early v. S., 103 S. W. 868, 123 Am. St. Rep. 889; Logan v. S., 148 S. W. 713; Mann v. S., 204 S. W. 434; Wood v. S., 206 S. W. 349.

Art. 749. (729) (691) Punishment for violation of preceding article.—Any juror or other person violating the preceding article shall be punished for contempt of court by fine not exceeding one hundred dollars.

See Early v. S., 103 S. W. 868, 123 Am. St. Rep. 889.

Art. 750. (730) Officer shall attend jury.—In order to supply all the reasonable wants of the jury, and for the purpose of keeping them together and preventing intercourse with any other person, the sheriff shall see that they are constantly attended by a proper officer, who shall always remain sufficiently near the jury to answer to any call made upon him by them, but shall not be with them while they are discussing the case; nor shall such officer, at any time while the case is on trial before them, converse about the case with any of them, nor in the presence of any of them. (O. C. 608, 609.)

See Anderson v. S., 110 S. W. 54; Johnson v. S., 161 S. W. 1098.

Art. 751. (731) Jury may take all papers in the case.—The jury may take with them, on retiring to consider their verdict, all the original papers in the cause, and any papers used as evidence. (O. C. 610.)

See Ferguson v. S., 146 S. W. 465; Warren v. S., 149 S. W. 130; Howard v. S., 163 S. W. 429; Hicks v. S., 171 S. W. 755; Holder v. S., 194 S. W. 162.

Art. 752. (732) Foreman appointed.—The jury, in all cases, shall appoint one of their body foreman, in order that their deliberations may be conducted with regularity and order. (O. C. 611.)

Art. 753. (733) Jury may communicate with the court.—When the jury wish to communicate with the court, they shall make their wish known to the sheriff, who shall inform the court thereof; and they may be brought before the court, and, through their foreman, shall state to the court, either verbally or in writing, what they desire to communicate. (O. C. 612, 613.)

See post, art. 756; Washington v. S., 119 S. W. 689; Miller v. S., 138 S. W. 113; Beck v. S., 141 S. W. 111; Cowart v. S., 145 S. W. 341.

Art. 754. (734) Jury may ask further instruction.—The jury, after having retired, may ask further instruction of the judge touching any matter of law. For this purpose, the jury shall appear before the judge, in open court, in a body, and through their foreman shall state to the court, either verbally or in writing, the particular point 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 point on which it is asked. (O. C. 614.)

See post, art. 756; Flores v. S., 53 S. W. 346; McKinney v. S., 88 S. W. 1012; Miller v. S., 138 S. W. 113; Beck v. S., 141 S. W. 111; Harris v. S., 144 S. W. 232; Farris v. S., 144 S. W. 249; Cowart v. S., 145 S. W. 341; Harrison v. S., 153 S. W. 139; Bell v. S., 156 S. W. 1194; Mikeska v. S., 182 S. W. 1127; Jacobs v. S., 208 S. W. 917.

Art. 755. (735) Jury may have witness re-examined, when.—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 he shall be further instructed to make his statement in the language used in his examination as nearly as he can. (O. C. 615.)

See Burton v. S., 81 S. W. 742; Killman v. S., 112 S. W. 92; Cowart v. S., 145 S. W. 341; Orner v. S., 183 S. W. 1172.

Art. 756. (736) Defendant shall be present, when.—In every case of felony, the defendant shall be present in the court when any such proceeding is had, as mentioned in the three next preceding articles. His counsel shall also be called. In cases of misdemeanor, the defendant need not be personally present. (O. C. 617.)

See Cowart v. S., 145 S. W. 341.

Art. 757. (737) If a juror become sick after retirement.—If, after the retirement of the jury, in a felony case, any one of them becomes so sick as to prevent the continuance of his duty, or any accident or circumstance occurs to prevent their being kept together, the jury may be discharged. (O. C. 618.)

See Woodward v. S., 58 S. W. 135.

Art. 758. (738) In misdemeanor case in district court.—In a misdemeanor case, in the district court, if nine of the jury can be kept together, they shall not be discharged; but, if more than three of the twelve are discharged, the entire jury must be discharged. (Const., art. 5, sec. 13; Acts 1876, p. 82, sec. 19.)

See post, art. 765.

Art. 759. (739) Disagreement of jury.—The jury may be discharged after the cause is submitted to them, when they can not agree, and both parties consent to their discharge, or where they have been kept together for such time as to render it altogether improbable they can agree; in this latter case the court, in its discretion, may discharge them. (O. C. 619.)

Art. 760. (740) Final adjournment discharges jury.—A final adjournment of the court, before the jury have agreed upon a verdict, discharges them. (O. C. 620.)

Art. 761. (741) If no verdict, cause may be again tried, etc.—When a jury has been discharged, as provided in the four next preceding articles, without having rendered a verdict, the cause may be again tried at the same or another term. (O. C. 621.)

Art. 762. (742) Court may proceed with other business.—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. (O. C. 622.)

CHAPTER SIX

OF THE VERDICT

Art. 763. (743) (705) Definition of "verdict."—A "verdict" is a declaration by a jury of their decision of the issues submitted to them in the case, and it must be in writing and concurred in by each member of the jury.

See Rosson v. S., 38 S. W. 788; Jackson v. S., 40 S. W. 489; McGee v. S., 46 S. W. 709; Clifton v. S., 47 S. W. 642; Jones v. S., 117 S. W. 127.

Art. 764. (744) (706) In felony case, twelve jurors must concur, etc.—Not less than twelve jurors can render and return a verdict in a felony case, and the verdict shall be signed by the foreman.

See Barton v. S., 44 S. W. 1093; Petty v. S., 129 S. W. 615.

Art. 765. (745) When nine jurors may render verdict, etc.—In cases of misdemeanor, in the district court, where one or more of the jurors have been discharged from serving after the cause has been submitted to them, if there be as many as nine of the jurors remaining, those remaining may render and return a verdict; but, in such case, the verdict must be signed by each one of the jurors rendering it. (Acts 1876, p. 12, sec. 19.)

See ante, art. 758; Const., art. 5, sec. 13.

Art. 766. (746) (708) Six jurors in county court.—In the county court, in all criminal actions, the jury consists of six men, and the verdict must be concurred in by each of them. (Const., art. 5, sec. 17.)

Art. 767. (747) When jury have agreed, etc.—When the jury have agreed upon a verdict, they shall be brought into court by the proper officer; and if, when asked, they answer that they have agreed, the verdict shall be read aloud by the clerk; and, if in proper form and no juror dissents therefrom, and neither party requests to have the jury polled, the verdict shall be entered upon the minutes of the court. (O. C. 623.)

Art. 768. (748) Polling the jury.—It is the right, either of the state or of the defendant, to have the jury polled, which is done by calling separately the name of each juror and asking him if it is his verdict. If all, when asked, answer in the affirmative, the verdict shall be entered upon the minutes; but, if any juror answer in the negative, the jury shall retire again to consider of their verdict. (O. C. 624.)

Art. 769. (749) Defendant must be present, when.—In cases of felony, the defendant must be present when the verdict is read, unless he escapes after the commencement of the trial of the cause; but, in cases of misdemeanor, it may be received and read in his absence. (O. C. 625.)

See ante, art. 767; Wyatt v. S., 94 S. W. 219.

Art. 770. (750) Verdict must be general.—The verdict in every criminal action must be general; when there are special

pleas upon which the jury are to find, they must say in their verdict that the matters alleged in such pleas are true or untrue; where the plea is not guilty, they must find that the defendant is either "guilty" or "not guilty;" and, in addition thereto, they shall assess the punishment in all cases where the same is not absolutely fixed by law to some particular penalty. (O. C. 626.)

See O'Connor v. S., 39 S. W. 368; Pryor v. S., 51 S. W. 375; Lindley v. S., 122 S. W. 873; Whorton v. S., 152 S. W. 1082; Figueroa v. S., 159 S. W. 1188; Ex parte Pruitt, 200 S. W. 392; Ex parte McLoud, 200 S. W. 394.

Art. 771. (751) When offense of different degree is charged.—Where a prosecution is for an offense consisting of different degrees, the jury may find the defendant not guilty of the higher degree (naming it), but guilty of any degree inferior to that charged in the indictment or information. (O. C. 630.)

See Manning v. S., 39 S. W. 118; McGee v. S., 45 S. W. 709; Lee v. S., 55 S. W. 814; Smith v. S., 81 S. W. 936; Moody v. S., 105 S. W. 1127; Ward v. S., 151 S. W. 1073; Hughes v. S., 152 S. W. 912; Bell v. S., 156 S. W. 1194; Crowder v. S., 180 S. W. 706; Stockton v. S., 192 S. W. 236; Cirul v. S., 200 S. W. 1088; Borrer v. S., 204 S. W. 1003.

Art. 772. (752) Offenses consisting of degrees.—The following offenses include different degrees:

1. Murder, which includes all the lesser degrees of culpable homicide, and also an assault with intent to commit murder.

2. An assault with intent to commit any felony, which includes all assaults of an inferior degree.

3. Maiming, which includes disfiguring, wounding, aggravated assault and battery and simple assault and battery.

4. Arson, which includes every malicious burning made penal by law.

5. Burglary, which includes every species of house breaking and theft or other felony when charged in the indictment in connection with the burglary.

6. Theft, which includes swindling and all unlawful acquisitions of personal property punishable by the Penal Code.

7. Perjury, which includes all false swearing made punishable by the Penal Code.

8. Bigamy, which includes adultery and fornication.

9. Adultery, which includes fornication.

10. Riot, which includes unlawful assembly.

11. Kidnapping or abduction, which includes false imprisonment.

12. Every offense against the person includes within it assaults with intent to commit said offense, when such attempt is a violation of the penal law.

13. Every offense includes within it an attempt to commit the offense, when such an attempt is made penal by law. (O. C. 631.)

See Pool v. S., 129 S. W. 1135; Ward v. S., 151 S. W. 1073; Bell v. S., 156 S. W. 1194; Burkhiser v. Lyons, 167 S. W. 244; Crowder v. S., 180 S. W. 706; Stockton v. S., 192 S. W. 236; Cirul v. S., 200 S. W. 1088; Borrer v. S., 204 S. W. 1003.

Art. 773. (753) Informal verdict may be corrected.—If the jury find a verdict which is informal, their attention shall be called to it, and, with their consent, the verdict may, under the direction of the court, be reduced to the proper form. (O. C. 627.)

See Black v. S., 68 S. W. 683; Jones v. S., 113 S. W. 761; Murphree v. S., 115 S. W. 1189; Ragsdale v. S., 134 S. W. 234; Day v. S., 138 S. W. 123; Noland v. S., 140 S. W. 100; Gould v. S., 147 S. W. 247; Bessett v. S., 180 S. W. 249; Barnes v. S., 202 S. W. 949; Moore v. S., 203 S. W. 51.

Art. 774. (754) If jury refuse to have verdict corrected.—If the jury refuse to have the verdict altered, they shall again retire to their room to deliberate, unless it manifestly appear that the verdict is intended as an acquittal; and, in that case, the judgment shall be rendered accordingly, discharging the defendant. (O. C. 628.)

See Jones v. S., 113 S. W. 761; Day v. S., 138 S. W. 123; Gould v. S., 147 S. W. 247; Barnes v. S., 202 S. W. 949.

Art. 775. (755) Where several defendants are tried jointly.—Where several defendants are tried together, the jury may convict such of the defendants as they deem guilty and acquit others. (O. C. 632.)

Art. 776. (756) Same subject.—Where the jury, on the trial of several defendants, agrees to a verdict as to one or more, and can not agree as to others, they may find a verdict as to those in regard to whom they agree; and judgment shall be rendered accordingly; and the case, as to the rest, may be tried by another jury. (O. C. 633.)

See Mohan v. S., 60 S. W. 553; Ry. v. Johnson, 81 S. W. 4.

Art. 777. (757) In case of acquittal.—In all cases of acquittal, the defendant shall be immediately discharged from all further liability upon the charge for which he has been tried, and judgment upon the verdict accordingly shall be at once rendered and entered. (O. C. 635.)

Art. 778. (758) Judgment entered immediately.—In every case of acquittal or conviction, the proper judgment shall be entered immediately. (O. C. 634.)

Art. 779. (759) When verdict of guilty in felony.—When a verdict of guilty is rendered in any case of felony, the defendant shall remain in custody to await the further action of the court thereon. (O. C. 634.)

Art. 780. (760) Acquittal for insanity.—When the defendant is acquitted on the ground of insanity, the jury shall so state in their verdict. (O. C. 636.)

Art. 781. (761) Verdict on plea of guilty by person insane.—When a jury has been impaneled to assess the punishment upon a plea of "guilty" they shall say in their verdict what the punishment is which they assess; but where the jury are of opinion that a person pleading guilty is insane they shall so report to the court, and an issue as to that fact be tried before another jury; and if, upon such trial, it be found that the defendant is insane, such proceedings shall be had as are directed in title 12, chapter one, of this Code. (O. C. 637.)

Art. 782. (762) Conviction of lower is acquittal of higher offense.—If a defendant, prosecuted for an offense which includes within it lesser degrees, be convicted of an offense lower than that for which he is indicted, and a new trial be granted him, or the judgment be arrested for any cause other than the want of jurisdiction, the verdict upon the first trial shall be considered an acquittal of the higher offense; but he may, upon a second trial, be convicted of the same offense of which he was before convicted, or any other inferior thereto. (O. C. 642.)

See ante, art. 572; Cornelius v. S., 112 S. W. 1050; De Leon v. S., 114 S. W. 828.

CHAPTER SEVEN
OF EVIDENCE IN CRIMINAL ACTIONS

1. GENERAL RULES

Art. 783. (763) Rules of common law shall govern, except, etc.—The rules of evidence known to the common law of England, both in civil and criminal cases shall govern in the trial of criminal actions in this state, except where they are in conflict with the provisions of this Code or of some statute of the state. (O. C. 638.)

See ante, Civ. St. 3687.

Art. 784. (764) Rules of statute shall govern, when.—The rules of evidence prescribed in the statute law of this state in civil suits, shall, so far as applicable, govern also in criminal actions when not in conflict with the provisions of this Code or of the Penal Code. (O. C. 639.)

See Gould v. S., 134 S. W. 695.

Art. 785. (765) Defendant presumed to be innocent; reasonable doubt.—The defendant in a criminal case is presumed to be innocent until his guilt is established by legal evidence; and, in case of reasonable doubt as to his guilt, he is entitled to be acquitted. (O. C. 640.)

Art. 786. (766) Jury are the judges of facts.—The jury, in all cases, are the exclusive judges of the facts proved, and of the weight to be given to the testimony, except where it is provided by law that proof of any particular fact is to be taken as either conclusive or presumptive proof of the existence of another fact, or where the law directs that a certain degree of weight is to be attached to a certain species of evidence. (O. C. 643.)

See ante, art. 734; Smith v. S., 146 S. W. 896; Norwood v. S., 192 S. W. 248; Jacobs v. S., 208 S. W. 917.

Art. 787. (767) (729) Judge shall not discuss evidence offered, etc.—In ruling upon the admissibility of evidence, the judge shall not discuss or comment upon the weight of the same or its bearing in the case, but shall simply decide whether or not it is admissible; nor shall he, at any stage of the proceedings previous to the return of a verdict, make any remark calculated to convey to the jury his opinion of the case.

See Zysman v. S., 60 S. W. 669; Newman v. S., 64 S. W. 258; McMahan v. S., 135 S. W. 558; Drake v. S., 143 S. W. 1157; Scott v. S., 160 S. W. 960; Smith v. S., 195 S. W. 595.

2. OF PERSONS WHO MAY TESTIFY

Art. 788. (768) Persons incompetent to testify.—All persons are competent to testify in criminal actions, except the following:

1. Insane persons, who are in an insane condition of mind at the time when they are offered as witnesses, or who were in that condition when the events happened of which they are called to testify.

2. Children or other persons who, after being examined by the court, appear not to possess sufficient intellect to relate transactions with respect to which they are interrogated, or who do not understand the obligation of an oath.

3. All persons who have been or may be convicted of felony in this state, or in any other jurisdiction, unless such conviction has been legally set aside, or unless the convict has been legally pardoned for the crime of which he was convicted. But no person who has been convicted of the crime of perjury or false swearing, and whose conviction has not been legally set aside, shall have his competency as a witness restored by a pardon, unless such pardon by its terms specifically restore his competency to testify in a court of justice. (O. C. 644.)

See Grayson v. S., 51 S. W. 246; Flournoy v. S., 59 S. W. 903; Pones v. S., 63 S. W. 1021; Lee v. S., 64 S. W. 1047; Freasier v. S., 84 S. W. 361; Batterton v. S., 107 S. W. 826; Cabrera v. S., 118 S. W. 1054; Bradford v. S., 138 S. W. 118; Carden v. S., 138 S. W. 598; Watts v. S., 148 S. W. 310; Bowles v. S., 150 S. W. 626; Finch v. S., 158 S. W. 510; Goldstein v. S., 171 S. W. 709; Carter v. S., 181 S. W. 473; Bell v. S., 190 S. W. 732; Charles v. S., 196 S. W. 179; Burnett v. S., 201 S. W. 409; Smith v. S., 203 S. W. 771.

Art. 789. (769) Female alleged to be seduced may testify.—In prosecutions for seduction, under the provisions of the Penal Code, the female alleged to have been seduced shall be permitted to testify; but no conviction shall be had upon the testimony of the said female, unless the same is corroborated by other evidence tending to connect the defendant with the offense charged. (Acts 22d Leg. ch. 33, p. 34.)

See Nash v. S., 134 S. W. 709; Murphy v. S., 143 S. W. 616; Bishop v. S., 144 S. W. 278; Knight v. S., 144 S. W. 967; De Rossett v. S., 168 S. W. 531; Slaughter v. S., 174 S. W. 580; Haney v. S., 197 S. W. 1102.

Art. 790. (770) Defendant may testify.—Any defendant in a criminal action shall be permitted to testify in his own behalf therein, but the failure of any defendant to so testify shall not be taken as a circumstance against him, nor shall the same be alluded to or commented on by counsel in the cause; provided, that where there are two or more persons jointly charged or indicted, and a severance is had, the privilege of testifying shall be extended only to the person on trial. (Act 21st Leg., April 4, 1889.)

See Morales v. S., 36 S. W. 435; Dorrs v. S., 40 S. W. 312; Leslie v. S., 49 S. W. 73; McCandless v. S., 62 S. W. 745; Wade v. S., 63 S. W. 878; Aiken v. S., 64 S. W. 58; Sanchez v. S., 69 S. W. 514; Locklin v. S., 75 S. W. 308; Anderson v. S., 110 S. W. 54; Wilson v. S., 113 S. W. 529; Hare v. S., 118 S. W. 544, 133 Am. St. Rep. 950; Brown v. S., 122 S. W. 565; Willingham v. S., 136 S. W. 470; Jones v. S., 162 S. W. 1142; Stone v. S., 184 S. W. 193; Shepperd v. S., 196 S. W. 541; Parker v. S., 201 S. W. 173; White v. S., 202 S. W. 737; Samino v. S., 204 S. W. 233.

Art. 791. (771) Principals, accomplices and accessories.—Persons charged as principals, accomplices or accessories, whether in the same indictment or different indictments, can not be introduced as witnesses for one another, but they may claim a severance; and, if any one or more be acquitted, or the prosecution against them be dismissed, they may testify in behalf of the others. (O. C. 230.)

See P. C. arts. 90, 91; post, art. 797; Duffy v. S., 55 S. W. 177; Burdell v. S., 101 S. W. 988; Day v. S., 138 S. W. 123; Ryan v. S., 142 S. W. 878; Burton v. S., 146 S. W. 186; Pettis v. S., 150 S. W. 790; Christian v. S., 161 S. W. 101; Carter v. S., 165 S. W. 200; Wyres v. S., 166 S. W. 1150; Millner v. S., 169 S. W. 899; Fondren v. S., 179 S. W. 1170; Howard v. S., 184 S. W. 505; Sola v. S., 188 S. W. 1005; Clark v. S., 194 S. W. 157; Terrell v. S., 197 S. W. 1107; Ligon v. S., 198 S. W. 787.

Art. 792. (772) Court may interrogate witness touching competency.—The court may, upon suggestion made, or of its own option, interrogate a person who is offered as a witness, for the purpose of ascertaining whether he is competent to testify, or the competency or incompetency of the

witness may be shown by evidence. (O. C. 645.)

See Smith v. S., 85 S. W. 1153; Fondren v. S., 179 S. W. 1170.

Art. 793. (773) All other persons competent witnesses.—All other persons, except those enumerated in articles 798 and 805, whatever may be the relationship between the defendant and witness, are competent to testify, except that an attorney at law shall not disclose a communication made to him by his client during the existence of that relationship, nor disclose any other fact which came to the knowledge of such attorney by reason of such relationship. (O. C. 646.)

See Downing v. S., 136 S. W. 471.

Art. 794. (774) Husband and wife shall not testify as to, etc.—Neither husband nor wife shall, in any case, testify as to communications made by one to the other, while married; nor shall they, after the marriage relation ceases, be made witnesses as to any such communication made while the marriage relation subsisted, except in a case where one or the other is prosecuted for an offense; and a declaration or communication made by the wife to the husband, or by the husband to the wife, goes to extenuate or justify an offense for which either is on trial. (O. C. 647.)

See Speer's Marital Rights, p. 597; Williams v. S., 51 S. W. 224; Stiles v. S., 68 S. W. 993; Spivey v. S., 77 S. W. 444; Cole v. S., 88 S. W. 341; Id. 101 S. W. 118; Hobbs v. S., 112 S. W. 308; Richards v. S., 116 S. W. 587; Gant v. S., 116 S. W. 801; Gross v. S., 135 S. W. 373, 33 L. R. A. (N. S.) 477; Downing v. S., 136 S. W. 471; Walker v. S., 141 S. W. 243; Vickers v. S., 154 S. W. 578; Cowser v. S., 157 S. W. 758, Ann. Cas. 1916B, 598; Taylor v. S., 167 S. W. 56; Lewis v. S., 180 S. W. 248; Norwood v. S., 192 S. W. 248; Bennett v. S., 194 S. W. 148.

Art. 795. (775) Same subject.—The husband and wife may, in all criminal actions, be witnesses for each other; but they shall, in no case, testify against each other, except in a criminal prosecution for an offense committed by one against the other. (O. C. 648.)

See Speer's Marital Rights, p. 597; Miller v. S., 40 S. W. 313; Brock v. S., 71 S. W. 21; Spivey v. S., 77 S. W. 444; Stewart v. S., 106 S. W. 685; Rice v. S., 112 S. W. 299; Downing v. S., 136 S. W. 471; Vickers v. S., 154 S. W. 578; Taylor v. S., 167 S. W. 56; Eads v. S., 170 S. W. 145; Lewis v. S., 180 S. W. 248; Norwood v. S., 192 S. W. 248; Blake v. S., 193 S. W. 1064; Bennett v. S., 194 S. W. 148; Robbins v. S., 200 S. W. 525.

Art. 796. (776) (736) Religious opinion, etc., does not disqualify.—No person is incompetent to testify on account of his religious opinion or for the want of any religious belief. (Bill of Rights, sec. 5.)

See Ligget v. S., 65 S. W. 516.

Art. 797. (777) (737) Defendant jointly indicted may testify, when.—A defendant jointly indicted with others, and who has been tried and convicted, and whose punishment was fine only, may testify for the other defendant after he has paid the fine and costs.

See Burdett v. S., 101 S. W. 988.

Art. 798. (778) Judge of the court is a competent witness.—The judge of a court trying an offense is a competent witness for either the state or the defendant, and may be sworn upon the trial and examined. (O. C. 650.)

Art. 799. (779) Judge not required to testify, when.—When it is proposed to offer the testimony of a judge in a cause pending before him, he is not required to testify if he declares that there is no fact within his knowledge important in the cause. (O. C. 651.)

Art. 800. (780) Oath administered to the judge by the clerk.—When the judge of a court is offered as a witness, the oath may be administered to him by the clerk. (O. C. 652.)

Art. 801. (781) Testimony of accomplice not sufficient to convict, unless, etc.—A conviction can not be had upon the testimony of an accomplice, unless corroborated by other evidence tending to connect the defendant with the offense committed; and the corroboration is not sufficient, if it merely shows the commission of the offense. (O. C. 653.)

See Jenkins v. S., 57 S. W. 810; Williams v. S., 110 S. W. 63; Huffman v. S., 123 S. W. 596; Nash v. S., 134 S. W. 709; Slaughter v. S., 174 S. W. 580; Bagley v. S., 179 S. W. 1167; Ingram v. S., 182 S. W. 290; Pope v. S., 194 S. W. 590; Garcia v. S., 195 S. W. 196; Johnson v. S., 208 S. W. 170.

Art. 802. (782) In trials for forgery, etc.—In trials for forgery, the person whose name is alleged to have been forged is a competent witness; and, in all cases, not otherwise specially provided for, the person injured, or attempted to be injured, is a competent witness. (O. C. 658.)

3. EVIDENCE AS TO PARTICULAR OFFENSES

Art. 803. (783) Must be two witnesses, etc., in treason, or, etc.—No person can be convicted of treason, except upon the testimony of at least two witnesses to the same overt act, or upon his own confession in open court. (O. C. 654.)

Art. 804. (784) What evidence not admitted in treason, etc.—Evidence shall not be admitted in a prosecution for treason as to an overt act not expressly charged in the indictment; nor shall any person be convicted under an indictment for treason, unless one or more overt acts are expressly charged therein. (O. C. 655.)

Art. 805. (785) In case where two witnesses are required.—In all cases where, by law, two witnesses, or one with corroborating circumstances, are required to authorize a conviction, if the requirement be not fulfilled, the court shall instruct the jury to render a verdict of acquittal, and they are bound by the instruction. (O. C. 656.)

See Franklin v. S., 43 S. W. 85.

Art. 806. (786) Perjury and false swearing; two witnesses, etc., required.—In trials for perjury, no person shall be convicted except upon the testimony of two credible witnesses, or of one credible witness, corroborated strongly by other evidence as to the falsity of the defendant's statement, under oath, or upon his own confession in open court. (O. C. 657.)

See Whitaker v. S., 36 S. W. 253; Butler v. S., 38 S. W. 46; Montgomery v. S., 40 S. W. 805; Wilkerson v. S., 55 S. W. 49; Conant v. S., 103 S. W. 897; Reed v. S., 183 S. W. 1168; Timmins v. S., 199 S. W. 1106.

Art. 807. (787) Proof of intent to defraud in forgery.—In trials of forgery, it need not be proved that the defendant committed the act with intent to defraud any particular person. It shall be sufficient to prove that the forgery was, in its nature, calculated to injure or defraud any of the sovereignties, bodies corporate or politic, officers or persons, named in the definition of

the offense of forgery in the Penal Code. (O. C. 659.)

See P. C. art. 927; ante, art. 454.

4. OF DYING DECLARATIONS AND OF CONFESSIONS OF THE DEFENDANT

Art. 808. (788) Dying declarations, evidence, when.—The dying declaration of a deceased person may be offered in evidence, either for or against a defendant charged with the homicide of such deceased person, under the restrictions hereafter provided. To render the declarations of the deceased competent evidence, it must be satisfactorily proved:

1. That at the time of making such declaration he was conscious of approaching death, and believed there was no hope of recovery.

2. That such declaration was voluntarily made, and not through the persuasion of any person.

3. That such declaration was not made in answer to interrogatories calculated to lead the deceased to make any particular statement.

4. That he was of sane mind at the time of making the declaration. (O. C. 660.)

Art. 809. (789) Confession of defendant.—The confession of a defendant may be used in evidence against him if it appear that the same was freely made without compulsion or persuasion, under the rules hereafter prescribed. (O. C. 661.)

See Cross v. S., 101 S. W. 213; Harris v. S., 144 S. W. 232.

Art. 810. (790) When confession shall not be used.—The confession shall not be used, if, at the time it was made, the defendant was in jail or other place of confinement, nor while he is in the custody of an officer, unless made in the voluntary statement of accused, taken before an examining court in accordance with law, or be made in writing and signed by him; which written statement shall show that he has been warned by the person to whom the same is made: First, that he does not have to make any statement at all. Second, that any statement made may be used in evidence against him on his trial for the offense concerning which the confession is therein made; or, unless in connection with said confession, he makes statements of facts or circumstances that are found to be true, which conduce to establish his guilt, such as the finding of secreted or stolen property, or the instrument with which he states the offense was committed; provided, that where the defendant is unable to write his name and sign the statement by making his mark, such statement shall not be admitted in evidence, unless it be witnessed by some person other than a peace officer, who shall sign the same as a witness. (O. C. 662; amended, Acts 1907, p. 219.)

See Morales v. S., 36 S. W. 435; Scott v. S., 43 S. W. 336; Mathis v. S., 47 S. W. 464; Gallaher v. S., 50 S. W. 388; Parker v. S., 57 S. W. 668; Jackson v. S., 91 S. W. 788; Jones v. S., 96 S. W. 930; Cross v. S., 101 S. W. 213; Young v. S., 113 S. W. 276; Gaston v. S., 116 S. W. 582; Martin v. S., 124 S. W. 681; Nunn v. S., 131 S. W. 320; Jenkins v. S., 131 S. W. 542; Turner v. S., 136 S. W. 486; Henzen v. S., 137 S. W. 1141; Burton v. S., 137 S. W. 1145; Ayers v. S., 137 S. W. 1146; Harris v. S., 144 S. W. 232; Bailey v. S., 144 S. W. 996; Windham v. S., 150 S. W. 613; Roberts v. S., 150 S. W. 627; Lane v. S., 152 S. W. 897; Manley v. S., 153 S. W. 1138; Belcher v. S., 161 S. W. 459; Moran v. S., 166 S. W. 161; Jernigan v. S., 179 S. W. 1187; Freeman v. S., 188 S. W. 425; Oliver v. S., 197 S. W. 185; Dover v. S., 197 S. W. 192; Clark v. S., 207 S. W. 98.

5. MISCELLANEOUS PROVISIONS

Art. 811. (791) When part of an act, declaration, etc., is given in evidence.—When part of an act, declaration or conversation or writing is given in evidence by one party, the whole on the same subject may be inquired into by the other, as, when a letter is read, all other letters on the same subject between the same parties may be given. And when a detailed act, declaration, conversation or writing is given in evidence, any other act, declaration or writing which is necessary to make it fully understood or to explain the same may also be given in evidence. (O. C. 664.)

See Ford v. S., 51 S. W. 935; Giles v. S., 67 S. W. 411; Chenault v. S., 81 S. W. 971; Pratt v. S., 109 S. W. 138; Jackson v. S., 115 S. W. 262, 131 Am. St. Rep. 792; Potts v. S., 118 S. W. 535; Cotton v. Morrison, 140 S. W. 114; Treadway v. S., 144 S. W. 655; Lawson v. S., 148 S. W. 587; Wilson v. S., 155 S. W. 242; Coulter v. S., 162 S. W. 885; Wyres v. S., 166 S. W. 1150; Francis v. S., 170 S. W. 779; Strauss v. S., 173 S. W. 663; De Arman v. S., 189 S. W. 145; Wood v. S., 189 S. W. 474; Edwards v. S., 191 S. W. 542; Bennett v. S., 194 S. W. 148; Davis v. S., 197 S. W. 871; Burnett v. S., 201 S. W. 409; Morris v. S., 206 S. W. 82.

Art. 812. (792) Written part of an instrument shall control, etc.—When an instrument is partly written and partly printed, the written shall control the printed portion when the two are inconsistent. (O. C. 665.)

Art. 813. (793) When subscribing witness denies execution, etc., of instrument.—When a subscribing witness denies or does not recollect the execution of an instrument to which his name appears, its execution may be proved by other evidence. (O. C. 666.)

Art. 814. (794) Evidence of handwriting by comparison.—It is competent in every case to give evidence of handwriting by comparison, made by experts or by the jury; but proof by comparison only shall not be sufficient to establish the handwriting of a witness who denies his signature under oath. (O. C. 667.)

See Spicer v. S., 105 S. W. 813; Brooks v. S., 122 S. W. 386; Batte v. S., 122 S. W. 561; Reeseman v. S., 128 S. W. 1126; Leonard v. S., 152 S. W. 632; Jackson v. S., 193 S. W. 301.

Art. 815. (795) Party may attack testimony of his own witness, when and how.—The rule that a party, introducing a witness, shall not attack his testimony in so far modified as that any party, when facts stated by the witness are injurious to his cause, may attack his testimony in other manner, except by proving the bad character of the witness. (O. C. 668.)

See Storms v. S., 37 S. W. 439; Williford v. S., 37 S. W. 761; Barnard v. S., 73 S. W. 957; Baum v. S., 133 S. W. 271; Price v. S., 147 S. W. 243; Alexander v. S., 151 S. W. 807; Perry v. S., 155 S. W. 263; Hightower v. S., 155 S. W. 533; Holmes v. S., 157 S. W. 487; Evans v. S., 172 S. W. 795; Thompson v. S., 177 S. W. 503; Taylor v. S., 179 S. W. 113; Martin v. S., 189 S. W. 264.

Art. 816. (796) (756) Interpreter shall be sworn to interpret, when.—When a witness does not understand and speak the English language, an interpreter must be sworn to interpret for him. Any person may be subpœnaed, attached or recognized in any criminal action or proceeding, to appear before the proper judge or court to act as

interpreter in such criminal action or proceeding, under the same rules and penalties as are provided in the case of the witnesses.
See Brown v. S., 59 S. W. 1118.

CHAPTER EIGHT

OF THE DEPOSITIONS OF WITNESSES AND TESTIMONY TAKEN BEFORE EXAMINING COURTS AND JURIES OF INQUEST

Art. 817. (797) Defendant may have deposition taken when examination, etc.—When an examination takes place in a criminal action before a magistrate, the defendant may have the deposition of any witness taken by any officer or officers hereafter named in this chapter; but the state or person prosecuting shall have the right to cross-examine the witnesses; and the defendant shall not use the deposition for any purpose, unless he first consent that the entire evidence or statement of the witness may be used against him by the state on the trial of the case. (O. C. 764.)

Art. 818. (798) May also be taken, when.—Depositions of witnesses may also, at the request of the defendant, be taken in the following cases:

1. When the witness resides out of the state.

2. When the witness is aged or infirm. (O. C. 765.)

See Gregory v. S., 39 S. W. 572; Kirkpatrick v. S., 121 S. W. 511; Slaughter v. S., 174 S. W. 580.

Art. 819. (799) Depositions within the state, taken by whom.—Depositions of witnesses within the state may be taken by a supreme or district judge, or before any two or more of the following officers: The county judge of a county, notary public, clerk of the district court and clerk of the county court. (O. C. 766.)

Art. 820. (800) May be taken out of the state, by whom.—Depositions of a witness residing out of the state may be taken before the judge or chancellor of a supreme court of law or equity, or before a commissioner of deeds and depositions for this state, who resides within the state where the deposition is to be taken. (O. C. 767.)

Art. 821. (801) Depositions of non-resident witness temporarily within the state.—The deposition of a non-resident witness who may be temporarily within the state, may be taken under the same rules which apply to the taking of depositions of other witnesses in the state. (O. C. 768.)

Art. 822. (802) Shall be taken as in civil cases.—The rule prescribed in civil cases for taking the depositions of witnesses shall, as to the manner and form of taking and returning the same, govern in criminal actions, when not in conflict with the requirements of this Code. (O. C. 769.)

Art. 823. (803) Same objections to depositions as in civil cases.—The same rules of procedure as to objections to depositions shall govern in criminal actions which are prescribed in civil actions, when not in conflict with this Code. (O. C. 770.)

See Blake v. S., 43 S. W. 107.

Art. 824. (804) How defendant shall proceed in taking depositions.—When the defendant desires to take the deposition of a witness at any other time than before the examining court, he shall, by himself or counsel, file with the clerk of the court in which the case is pending a statement on oath setting forth the facts necessary to constitute a good reason for taking the same; and, in addition thereto, state in his affidavit that he has no other witness whose attendance on the trial can be procured, by whom he can prove the facts he desires to establish by the deposition. (O. C. 771.)

Art. 825. (805) Written interrogatories filed, etc., as in civil cases.—In cases arising under the preceding article, written interrogatories shall be filed with the clerk of the court, and a copy of the same served on the district attorney, or county attorney of the proper district or county, the length of time required for service of interrogatories in civil actions. (O. C. 765.)

Art. 826. (806) Certificate of officer taking deposition.—In every case where depositions are taken under commission in criminal actions, the officer or officers taking the same shall certify that the person deposing is the identical person named in the commission, and is a credible person; or, if they can not certify to the identity of the witness, there shall be an affidavit of some person attached to the deposition proving the identity and credibility of such witness, and the officer or officers shall certify that the person making the affidavit is known to them, and is worthy of credit. (O. C. 773.)

Art. 827. (807) Where two officers act, each shall sign and seal.—In cases where it is required that two officers shall act in executing a commission to take depositions, the official seal and signature of each shall be attached to the certificate authenticating the deposition. (O. C. 774.)

Art. 828. (808) Deposition before examining court, taken how.—The deposition of a witness taken before an examining court may be taken without interrogatories; but whenever a deposition is so taken it shall be done by the proper officer or officers; and there shall be allowed, both to the state and to the defendant, full liberty of cross-examination. (O. C. 775.)

Art. 829. (809) May be taken without commission.—The depositions of witnesses taken before an examining court may be taken without a commission; and, if such examining court be held by a supreme or district judge, he shall, upon request, proceed to take depositions of the witnesses. (O. C. 776.)

Art. 830. (810) Duty of officer to attend.—Where any of the officers, other than a supreme or district judge, are called upon to take a deposition before an examining court, it is their duty to attend and take the same. (O. C. 777.)

Art. 831. (811) How deposition shall be returned.—A deposition taken in an examining court shall be sealed up and delivered by the officer or officers, or one of them, to the clerk of the court of the county having jurisdiction to try the offense; in all other cases the return of depositions may be made as provided for depositions in civil actions. (O. C. 778.)

Art. 832. (812) Depositions shall not be read, unless oath be made that, etc.—Depositions taken in criminal actions shall not be read, unless oath be made that the witness resides out of the state; or, that,

since his deposition was taken, the witness has died; or that he has removed beyond the limits of the state; or that he has been prevented from attending the court through the act or agency of the defendant; or by the act or agency of any person whose object was to deprive the defendant of the benefit of the testimony; or that, by reason of age or bodily infirmity, such witness can not attend. (O. C. 779.)

Art. 833. (813) District or county attorney may make oath.—When the deposition is sought to be used by the state, the oath prescribed in the preceding article may be made by the district or county attorney, or any other credible person; and, when sought to be used by the defendant, the oath shall be made by him in person. (O. C. 780.)

Art. 834. (814) Testimony taken before examining court may be read in evidence, when.—The deposition of a witness taken before an examining court or a jury of inquest, and reduced to writing, and certified according to law, in cases where the defendant was present when such testimony was taken, and had the privilege afforded him of cross-examining the witness, may be read in evidence as is provided in the two preceding articles for the reading in evidence of depositions. (Acts 1866, p. 160.)

TITLE 9

OF PROCEEDINGS AFTER VERDICT

CHAPTER ONE

OF NEW TRIALS

Art. 835. (815) Definition of "new trial."—A "new trial" is the rehearing of a criminal action, after verdict, before the judge or another jury, as the case may be. (O. C. 669.)

Art. 836. (816) Granted only to a defendant.—A new trial can in no case be granted where the verdict or judgment has been rendered for the defendant. (O. C. 670.)

Art. 837. (817) New trial in felony cases granted, for what causes.—New trials, in cases of felony, shall be granted for the following causes, and for no other:

1. Where the defendant has been tried in his absence, or has been denied counsel.

2. Where the court has misdirected the jury as to the law, or has committed any other material error calculated to injure the rights of the defendant.

3. Where the verdict has been decided by lot, or in any other manner than by a fair expression of opinion by the jurors.

4. Where a juror has received a bribe to convict, or has been guilty of any other corrupt conduct.

5. Where any material witness of the defendant has, by force, threats or fraud, been prevented from attending the court, or where any written evidence, tending to establish the innocence of the defendant, has been intentionally destroyed or removed so that it could not be produced upon the trial.

6. Where new testimony material to the defendant has been discovered since the trial. A motion for a new trial, based on this ground, shall be governed by the same rules as those which regulate civil suits.

7. Where the jury, after having retired to deliberate upon a case, have received other testimony; or where a juror has conversed with any person in regard to the case; or where any juror, at any time during the trial or after retiring, may have become so intoxicated as to render it probable his verdict was influenced thereby. But the mere drinking of liquor by a juror shall not be sufficient ground for granting a new trial.

8. Where, from the misconduct of the jury, the court is of opinion that the defendant has not received a fair and impartial trial; and it shall be competent to prove such misconduct by the voluntary affidavit of a juror; and a verdict may, in like manner, in such cases be sustained by such affidavit.

9. Where the verdict is contrary to law and evidence. A verdict is not contrary to the law and evidence, within the meaning of this provision, where the defendant is found guilty of an offense of inferior grade to, but of the same nature as, the offense proved. (O. C. 672.)

See Mitchell v. S., 36 S. W. 456; Driver v. S., 38 S. W. 1020; White v. S., 40 S. W. 789; Darter v. S., 44 S. W. 850; Singleton v. S., 50 S. W. 951; Keith v. S., 56 S. W. 628; Ysaguirre v. S., 58 S. W. 1005; Riggins v. S., 60 S. W. 877; Blocker v. S., 61 S. W. 391; Long v. S., 88 S. W. 203; Kaunmacher v. S., 101 S. W. 238, 112 S. W. 939; Bacon v. S., 134 S. W. 690; Patton v. S., 136 S. W. 42; Wysong v. S., 146 S. W. 941; Ward v. S., 151 S. W. 1073; Hicks v. S., 171 S. W. 755; Calyon v. S., 174 S. W. 591; Crowder v. S., 180 S. W. 706; Stockton v. S., 192 S. W. 236; McDougal v. S., 194 S. W. 944, L. R. A. 1917E, 930; Waters v. S., 196 S. W. 536; Hensley v. S., 197 S. W. 869; Cirul v. S., 200 S. W. 1088; Moore v. S., 203 S. W. 51.

Art. 838. (818) (778) In misdemeanors, granted when.—New trials in cases of misdemeanor may be granted for any of the causes specified in the preceding article, except that contained in subdivison one of said article.

Art. 839. (819) (779) Must be applied for within two days, except.—A new trial must be applied for within two days after the conviction; but, for good cause shown, the court, in cases of felony, may allow the application to be made at any time before the adjournment of the term at which the conviction was had. When the court adjourns before the expiration of two days from the conviction, the motion shall be made before the adjournment.

See Young v. S., 113 S. W. 16; Banks v. S., 186 S. W. 840; Sessions v. S., 197 S. W. 718.

Art. 840. (820) (780) Motions for new trial shall be in writing.—All motions for new trials shall be in writing, and shall set forth distinctly the grounds upon which the new trial is asked.

Art. 841. (821) (781) State may controvert truth of causes set forth, etc.—The state may take issue with the defendant upon the truth of the causes set forth in the motion for a new trial; and, in such case, the judge shall hear evidence, by affidavit or otherwise, and determine the issue.

See Keith v. S., 56 S. W. 628; Kaunmacher v. S., 101 S. W. 238; Fox v. S., 109 S. W. 370; Pickett v. S., 118 S. W. 1039; Dougherty v. S., 128 S. W. 398; Calyon v. S., 174 S. W. 591; Jackson v. S., 196 S. W. 826; McConnell v. S., 200 S. W. 842; Mills v. S., 204 S. W. 642; Alexander v. S., 206 S. W. 362.

Art. 842. (822) (782) Judge shall not discuss the evidence, etc.—In granting or refusing a new trial, the judge shall not sum up, discuss or comment upon the evidence in the case, but shall simply grant or refuse

the motion, without prejudice to either the state or the defendant.

See Rocha v. S., 63 S. W. 1018.

Art. 843. (823) Effect of a new trial.—The effect of a new trial is to place the cause in the same position in which it was before any trial had taken place. The former convictions shall be regarded as no presumption of guilt, nor shall it be alluded to in the argument. (O. C. 674.)

See Hamilton v. S., 51 S. W. 217; Pickett v. S., 51 S. W. 374; Brantly v. S., 59 S. W. 892; Gann v. S., 59 S. W. 897; Johnson v. S., 59 S. W. 899; Baines v. S., 66 S. W. 847; Gaines v. S., 77 S. W. 10; Casey v. S., 102 S. W. 725; Benson v. S., 118 S. W. 1049; Wyatt v. S., 124 S. W. 929, 137 Am. St. Rep. 926; Hughes v. S., 152 S. W. 912; Sanders v. S., 158 S. W. 291; Coffman v. S., 165 S. W. 939; Eads v. S., 170 S. W. 145; McDougal v. S., 194 S. W. 944, L. R. A. 1917E, 930; Mann v. S., 204 S. W. 434; Morris v. S., 206 S. W. 82.

Art. 844. (824) When new trial is refused, statement of facts, etc.—If a new trial be refused, a statement of facts may be drawn up and certified, and accompany the record as in civil suits. Where the defendant has failed to move for a new trial he is, nevertheless, entitled, if he appeals, to have a statement of the facts certified, and sent up with the record. (O. C. 673.)

See Black v. S., 53 S. W. 116; Duke v. S., 57 S. W. 669; Auginana v. S., 57 S. W. 816; Lewis v. S., 59 S. W. 886; Stanford v. S., 60 S. W. 254; Sampson v. S., 78 S. W. 926; Ex parte Firmin, 131 S. W. 1113; Roberts v. S., 136 S. W. 483; Serop v. S., 154 S. W. 557; Simpson v. S., 154 S. W. 999; Sessions v. S., 197 S. W. 718; Anselmo v. S., 200 S. W. 523.

Art. 844a. Time for presentation of statements of fact and bills of exception; time for preparation of findings; authority of judge after expiration of term of office.—That parties to causes tried in the district and county courts of this state may, by having an order to that effect entered on the docket, be granted twenty days after the adjournment of the term at which said cause may be tried to present and have approved and filed a statement of facts, bills of exception, and the judges of such courts shall also have ten days after adjournment of the term at which said causes may be tried, in which to prepare their findings of fact and conclusions of law in cases tried before the court; when demand is made therefor. And judges whose terms of office may expire before the adjournment of the term of said court at which said cause is tried, or during said period of twenty days after the adjournment of the term, may approve such statement of facts, bills of exceptions, and file such findings of facts and conclusions of law, as above provided. (Act March 8, 1887, p. 17; Acts 1903, ch. 25; Acts 1907, S. S., p. 446, ch. 7, sec. 1.)

The above provision was omitted from the revised Code of Criminal Procedure of 1911, and in view of such decisions as Berry v. S., 156 S. W. 626; Mueller v. S., 135 S. W. 571; Mosher v. S., 136 S. W. 467, is included in this compilation.

Art. 844aa. Duties of reporter.—It shall be the duty of the official shorthand reporter to attend all sessions of the court; to take full shorthand notes of all the oral testimony offered in every case tried in said court, together with all objections to the admissibility of testimony, the rulings and remarks of the court thereon, and all exceptions to such rulings; to preserve all shorthand notes taken in said court for future use or reference for four years, and to furnish to any person a transcript in question and answer form of all such evidence or other proceedings or any portion thereof, upon the payment to him of the compensation hereinafter provided. (Rev. Civ. St. 1911, art. 1923, superseded; Acts 1911, p. 264, sec. 4.)

Art. 844b. Duty of shorthand reporter to transcribe notes on appeal being taken; duplicate; fees.—In case an appeal is perfected from the judgment rendered in any case, the official shorthand reporter shall transcribe the testimony and other proceedings recorded by him in said case in the form of questions and answers, certifying that such transcript is true and correct, and shall file the same in the office of the clerk of the court within such reasonable time as may be fixed by written order of the court. Said transcript shall be made in duplicate; for which said transcript the official shorthand reporter shall be paid the sum of fifteen cents per folio of one hundred words for the original copy and no charge shall be made for the duplicate copy, said transcript to be paid for by the party ordering the same on delivery, and the amount so paid shall be taxed as costs. (Acts 1903, ch. 60; Acts 1905, ch. 112; Acts 1907, 1st S. S. ch. 24, sec. 5, repealed; Acts 1909, p. 376, sec. 5, repealed; Acts 1911, p. 265, ch. 119, sec. 5.)

Art. 844c. Party appealing may make statement from transcript filed by shorthand reporter; agreement of parties; shorthand reporter may make statement of facts; fees.—Upon the filing in the office of the clerk of the court by the official shorthand reporter of his transcript as provided in Section 5 of this Act [Art. 844b], the party appealing shall prepare or cause to be prepared from the transcript filed by the official shorthand reporter, as provided in Section 5 of this Act, a statement of facts, in duplicate, which shall consist of the evidence adduced upon the trial, both oral and by deposition, stated in succinct manner and without unnecessary repetition, together with copies of such documents, sketches, maps and other matters as were used in evidence. It shall not be necessary to copy said statement of facts in the transcript of the clerk, on appeal, but the same shall, when agreed to by the parties and approved by the judge, or in the event of a failure of the parties to agree and a statement of facts is prepared and certified by the judge trying the case, be filed in duplicate with the clerk of the court, and the original thereof shall be sent up as a part of the record in the cause on appeal. Provided, however, that the official shorthand reporter shall, when requested by the party appealing, prepare from the transcript filed by the official shorthand reporter, as provided in Section 5 of this Act, a statement of facts in narrative form, in duplicate, and deliver the same to the party appealing, for which said statement of facts he shall be paid by the party appealing the sum of fifteen cents per folio of 100 words for the original copy, and no charge should be made for the duplicate copy, and such amount shall not be taxed as costs in the case. (Acts 1903, ch. 60; Acts 1905, ch. 112; Acts 1907, 1st S. S., ch. 24, sec. 6, repealed;

Acts 1909, p. 376, sec. 6, repealed; Acts 1911, p. 265, ch. 119, sec. 6.)

Art. 845. Time for preparing and filing statement of facts and bill of exceptions; extension of time; failure to agree on statement of facts; duty of court; what constitutes filing within time.—When an appeal is taken from the judgment rendered in any cause in any district or county court, the parties to the suit shall be entitled to any [and] they are hereby granted thirty days after the day of adjournment of court in which to prepare or cause to be prepared, and to file a statement of facts and bills of exception; and upon good cause shown, the judge trying the cause may extend the time in which to file a statement of facts and bills of exception. Provided, that the court trying such cause shall have the power in term time or vacation, upon the application of either party, for good cause, to extend the several times as hereinbefore provided for the preparation and filing of the statement of facts and bills of exception, but the same shall not be so extended so as to delay the filing of the statement of facts, together with the transcript of record, in the appellate court within the time prescribed by law, and when the parties fail to agree upon a statement of facts, and that duty devolves upon the court, the court shall have such time in which to do so, after the expiration of thirty days, as hereinbefore provided, as the court may deem necessary, but the court in such case shall not postpone the preparation and filing of same, together with the transcript of the record, in the appellate court within the time prescribed by law. Provided, if the term of said court may by law continue more than eight weeks, said statement of facts and bills of exception shall be filed within thirty days after final judgment shall be rendered, unless the court shall by order entered of record in said cause extend the time for filing such statement and bills of exception. Provided, further, that when the parties fail to agree upon a statement of facts, the judge shall not be required to prepare such statement of facts, unless the party appealing, by himself or attorney, within the time allowed for filing, shall present to the judge a statement of facts, and shall certify thereon, over his signature, that to the best of his knowledge and belief, it is a full and fair statement of all the facts proven on the trial. Provided that any statement of facts filed before the time for filing the transcript in the appellate court expires, shall be considered as having been filed within time allowed by law for filing same. (Acts 1903, ch. 60; Acts 1905, ch. 112; Acts 1907, S. S., ch. 24; Acts 1909, p. 376, sec. 7, repealed; Acts 1911, p. 266, ch. 119, sec. 7.)

Art. 845, as it appeared in the revision of 1911, is superseded by Acts 1911, ch. 119, § 13, which repeals Acts 1909, p. 374, ch. 39, the act from which the superseded article was taken.

Art. 845a. Affidavit of inability to pay for transcript; false affidavit.—Provided, that when any criminal case is appealed and the defendant is not able to pay for a transcript as provided for in Section 5 of this Act [Art. 844b], or to give security therefor, he may make affidavit of such fact, and upon the making of such affidavit the Court shall order the Official Shorthand Reporter to make such transcript in duplicate, and deliver them as herein provided in civil cases, but the Official Shorthand Reporter shall receive no pay for same; provided that should any such affidavit so made by such defendant be false he shall be prosecuted and punished as is now provided by law for making false affidavits. (Acts 1911, ch. 119, sec. 8; Acts 1917, ch. 189, sec. 1; Acts 1917, 1st. C. S., ch. 27, sec. 1; Acts 1918, 4th C. S., ch. 79, sec. 1; Acts 1919, ch. 111, sec. 1.)

Acts 1919, ch. 111, sec. 1, amends sec. 8, chapter 119, general laws, regular session 32d Leg. 1911, as amended by chapter 189, regular session 35th Leg. This article is a part of said sec. 8, as amended. For the remainder of said sec. 8, as amended, see Civ. St. arts. 1925, 2071.

Art. 845b. Duty of shorthand reporter to make transcript of evidence on request; fees.—At the request of any party to the suit it shall be the duty of the official shorthand reporter to make a transcript in typewriting of all the evidence and other proceedings or any portion thereof, in question and answer form, as provided in Section 5 of this Act [art. 844b], which transcript shall be paid for at the rate of fifteen cents per folio of 100 words by and be the property of the person ordering the same. (Acts 1909, p. 376, sec. 9; repealed; Acts 1911, ch. 119, sec. 9.)

Art. 845c. Repeal; proviso.—That Chapter 39, page 374, Acts of the First Called Session of the Thirty-first Legislature of the State of Texas, providing for the appointment of court stenographers, prescribing their duties and regulating their charges and compensation, and all other laws or parts of laws in conflict with this Act be, and the same are hereby expressly repealed; provided, however, that nothing in this Act shall be so construed as to prevent parties from preparing statements of facts on appeal independent of the transcript of the notes of the official shorthand reporter. (Acts 1911, ch. 119, sec. 13.)

Art. 846. Shorthand reporter shall keep stenographic record of trial of felony cases; duty in case parties cannot agree as to testimony; condensation; furnishing transcript to attorney appointed to represent defendant.—In the trial of all criminal cases in the district court in which the defendant is charged with a felony, the official shorthand reporter shall keep an accurate stenographic record of all the proceedings of such trial in like manner as is provided for in civil cases, and should an appeal be prosecuted in any judgment of conviction, whenever the State and defendant can not agree as to the testimony of any witness, then and in such event, so much of the transcript of the official shorthand reporter's report with reference to such disputed fact or facts shall be inserted in the statement of facts as is necessary to show what the witness testified to in regard to the same, and constitute a part of the statement of facts, and the same shall apply to the preparation of bills of exceptions; provided, that such stenographer's report when carried into the statement of facts or bills of exception, shall be condensed so as not to contain the questions and answers, except where, in the opinion of the judge, such questions and answers may be necessary in order to elucidate the fact or question involved. Provided, that in all cases where the

court is required to and does appoint an attorney to represent the defendant in a criminal action, that the official shorthand reporter shall be required to furnish the attorney for said defendant, if convicted, and where an appeal is prosecuted, with a transcript of his notes as provided in Section 5 of this Act [art. 844b], for which said service he shall be paid by the State of Texas, upon the certificate of the district judge, one-half of the rate provided for herein in civil cases. (Acts 1907, ch. 24, sec. 5; Acts 1909, p. 379, repealed; Acts 1911, ch. 119, sec. 14.)

Acts 1911, ch. 119, sec. 13, repeals Acts 1909, 1st C. S., p. 374, ch. 39. As art. 846, as it appeared in the revision of 1911, was constructed from the repealed act, such article is superseded. The new provision is given the same article number in this compilation.

CHAPTER TWO

ARREST OF JUDGMENT

Art. 847. (825) Definition of "motion in arrest of judgment."—A "motion in arrest of judgment" is a suggestion to the court on the part of the defendant that judgment had not been legally rendered against him. The motion may be made orally or in writing, and the record must show the grounds of the motion. (O. C. 675.)

Art. 848. (826) Must be made in two days, etc.—The motion must be made within two days after the conviction: or, if the court adjourn before the expiration of two days from such conviction, then it may be made at any time before the final adjournment of the court for the term. (O. C. 676.)

See Reno v. S., 120 S. W. 429; Hamilton v. S., 145 S. W. 348.

Art. 849. (827) Shall be granted for what cause.—A motion in arrest of judgment shall be granted upon any ground which would be good upon exception to an indictment or information for any substantial defect therein. (O. C. 678.)

Art. 850. (828) Shall not be, etc.—No judgment shall be arrested for want of form. (O. C. 679.)

Art. 851. (829) Effect of arresting a judgment.—The effect of arresting a judgment is to place the defendant in the same position he was before the indictment or information was presented; and, if the court be satisfied from the evidence that he may be convicted upon a proper indictment or information, he shall be remanded into custody, or bailed, as the case may require. (O. C. 680.)

Art. 852. (830) Court may discharge defendant, when.—Where the court is not satisfied from the proof that, upon a proper indictment or information, the defendant may be convicted, he shall be discharged. (O. C. 681.)

CHAPTER THREE

JUDGMENT AND SENTENCE

1. IN CASES OF FELONY

Art. 853. (831) (791) Definition of "judgment."—A final judgment is the declaration of the court entered of record, showing—

1. The title and number of the case.
2. That the case was called for trial and that the parties appeared.
3. The plea of the defendant.
4. The selection, impaneling and swearing of the jury.
5. The submission of the evidence.
6. That the jury was charged by the court.
7. The return of the verdict.
8. The verdict.
9. In the case of a conviction, that it is considered by the court that the defendant is adjudged to be guilty of the offense as found by the jury; or, in case of acquittal, that the defendant be discharged.
10. That the defendant be punished as has been determined by the jury in cases where they have the right to determine the amount or the duration and the place of punishment in accordance with the nature and terms of the punishment prescribed in the verdict.

See Derrick v. S., 38 S. W. 605; Yates v. S., 39 S. W. 933; Creswell v. S., 39 S. W. 935; Longoria v. S., 44 S. W. 1089; Ex parte Matthews, 44 S. W. 153; Harris v. S., 47 S. W. 643; Ex parte Wilson, 48 S. W. 1119; Sims v. S., 55 S. W. 179; McCorquodale v. S., 98 S. W. 879; Robinson v. S., 126 S. W. 276; Bennett v. S., 194 S. W. 148; Ryan v. S., 198 S. W. 582; Moore v. S., 203 S. W. 51.

Art. 854. (832) (792) Definition of "sentence."—A "sentence" is the order of the court, made in the presence of the defendant, and entered of record, pronouncing the judgment, and ordering the same to be carried into execution in the manner prescribed by law.

Art. 855. (833) Judgment and sentence, when.—If a new trial is not granted, nor the judgment arrested, in cases of felony, the sentence shall be pronounced in the presence of the defendant at any time after the expiration of the time allowed for making the motion for a new trial or the motion in arrest of judgment. (O. C. 682.)

Art. 856. (834) In cases of appeal, sentence shall be pronounced.—When an appeal is taken in cases of felony, where the verdict prescribes the death penalty, sentence shall not be pronounced, but shall be suspended until the decision of the court of appeals has been received. In all other cases of felony, sentence shall be propounded before the appeal is taken; and, upon the affirmance of the judgment by the court of appeals, the clerk thereof shall at once transmit the mandate of the court to the clerk of the court from which the appeal was taken, there to be duly recorded in the minute book of said court; and a certified copy of this record, under the seal of the court, shall be sufficient authority to authorize and require the sheriff to execute the sentence without further delay. (O. C. 683; Acts 1879, p. 70.)

See Dent v. S., 59 S. W. 267; Roan v. S., 65 S. W. 1068; Wooldridge v. S., 135 S. W. 124; Kinch v. S., 150 S. W. 610; Bierman v. S., 164 S. W. 840.

Art. 857. (835) Where two days do not intervene before adjournment.—In cases where a conviction takes place so late in the term of the court as not to allow the two days' time for making a motion for a new trial, or in arrest of judgment, the sentence may be pronounced at any time before the court finally adjourns; provided, that in every case at least six hours shall be allowed for making either of these motions. (O. C. 684.)

Art. 858. (836) Same subject.—If, at the time a verdict is returned into court, there be less than six hours remaining, before the court, by law, must adjourn, it shall be lawful, and shall be the duty of the dis-

trict judge, to sit during the whole of Saturday night and Sunday for the purpose of enabling the defendant to move for a new trial or in arrest of judgment, and prepare his cause for the court of appeals. This article shall not require the district judge to sit longer than six hours after verdict rendered, if a motion for a new trial, or in arrest of judgment, shall not have been filed. (O. C. 685.)

Art. 859. (837) Where there has been a failure to enter judgment.—Where, from any cause whatever, there is a failure to enter judgment and pronounce sentence upon conviction during the term, the judgment may be entered, and sentence pronounced, at any succeeding term of the court, unless a new trial has been granted, or the judgment arrested, or an appeal has been taken. (O. C. 686.)

See McCorquodale v. S., 98 S. W. 879; Hinman v. S., 113 S. W. 280; Robinson v. S., 126 S. W. 276; Tucker v. S., 136 S. W. 258; Rios v. S., 183 S. W. 151.

Art. 860. (838) Before sentence, defendant shall be asked, etc.—Before pronouncing sentence in a case of felony, the defendant shall be asked whether he has anything to say why the sentence should not be pronounced against him. (O. C. 687.)

Art. 861. (839) Reasons which will prevent the sentence.—The only reasons which can be shown, on account of which sentence can not be pronounced, are:

1. That the defendant has received a pardon from the proper authority, on the presentation of which, legally authenticated, he shall be discharged.

2. That the defendant is insane; and, if sufficient proof be shown to satisfy the court that the allegation is well founded, no sentence shall be pronounced. And where there is sufficient time left, a jury may be impaneled to try the issue. Where sufficient time does not remain, the court shall order the defendant to be confined safely until the next term of the court, and shall then cause a jury to be impaneled to try such issue.

3. Where there has not been a motion for a new trial, or a motion in arrest of judgment made, the defendant may answer that he has good grounds for either or both of these motions, and either or both motions may be immediately entered and disposed of, although more than two days may have elapsed since the rendition of the verdict.

4. When a person who has been convicted of felony escapes after conviction and before sentence, and an individual supposed to be the same has been arrested, he may, before sentence is pronounced, deny that he is the person convicted, and an issue be accordingly tried before a jury as to his identity. (O. C. 688.)

See Hines v. S., 70 S. W. 955; Bird v. S., 87 S. W. 146.

Art. 862. (840) (800) Two or more convictions of same defendant at same term.—When the same defendant has been convicted in two or more cases, and the punishment assessed in each case is confinement in the penitentiary or the county jail for a term of imprisonment, judgment and sentence shall be pronounced in each case in the same manner as if there had been but one conviction, except that in the discretion of the court, the judgment in the second and subsequent convictions may either be that the punishment shall begin when the judgment and sentence in the preceding conviction have ceased to operate, or that the punishment shall run concurrently with the other case or cases, and sentence and execution shall be accordingly. (Acts 1883, p. 8; Acts 1919, ch. 20, sec. 1.)

See Ex parte Crawford, 36 S. W. 92; Stewart v. S., 38 S. W. 1143; Culwell v. S., 157 S. W. 765; Ex parte Davis, 160 S. W. 459; Forester v. S., 163 S. W. 87; Law v. S., 163 S. W. 90; Alsup v. S., 206 S. W. 345.

Art. 863. (841) Sentence of death.—Where the sentence of death is pronounced against a convict, a time shall be set for the execution of the same, not earlier than thirty days from the date of the sentence. (O. C. 689.)

Art. 864. (842) Warrant for execution of death penalty.—The clerk of the district court shall issue a warrant for the execution of the sentence of death, which shall recite the fact of conviction, setting forth specifically the offense, and the judgment of the court, the time fixed for its execution, and the manner in which it is to be executed. (O. C. 690.)

Art. 865. (843) (803) Another warrant may issue, when.—When, from any cause, the warrant provided for in the preceding article can not be executed at the time specified therein for the execution of the same, the sheriff shall forthwith return such warrant to the clerk who issued the same, indorsing thereon the reason why the same has not been executed, and shall, at the same time, report in writing to the judge of the district court having jurisdiction over the case, either in term time or in vacation, the fact that such warrant has not been executed, and the reason why the same was not executed; and such judge shall thereupon fix another time for the execution of such sentence, and shall issue his written order to the proper clerk, directing such clerk to issue another warrant for the execution of such sentence, specifying in such order the time fixed for the execution thereof; and the clerk shall file such order among the papers in the case, and immediately issue a warrant accordingly; and the execution of such warrant shall proceed, as in the first instance.

1½. INDETERMINATE AND SUSPENDED SENTENCES

Art. 865a. Indeterminate sentences of persons convicted of certain felonies.—That whenever any person seventeen years of age or over shall be on trial for any felony, the jury trying said cause shall not only ascertain whether or not said person is guilty of the offense charged in the indictment, but shall also in the verdict assess the punishment or penalty within the period of time fixed by law as the maximum and minimum penalty for such offense, provided, if the jury shall assess the punishment for such offense at a longer period of time than the minimum period of imprisonment in the penitentiary for such offense, then the judge presiding in such cause, in passing sentence on such person, instead of pronouncing a definite time of imprisonment in the penitentiary on such person so convicted, he shall pronounce upon such person an indeterminate sentence of imprisonment in the penitentiary, fixing in such sentence the mini-

mum and maximum terms thereof, fixing in said sentence as the minimum time of imprisonment in the penitentiary the time now or hereafter prescribed by law as the minimum time of imprisonment in the penitentiary, and as the maximum time of such imprisonment the term fixed by the jury in their verdict as punishment for such offense; provided, that if the punishment assessed by the jury shall be by pecuniary fine only, or imprisonment in the county jail, or both fine and imprisonment in the county jail, then the provisions of this act shall not apply. (Acts 1913, S. S. p. 4, sec. 1, superseding Acts 1913, p. 262, sec. 1.)

Art. 865b. Suspended sentence.—When there is a conviction of any felony in any district court of this state, except murder, perjury, burglary of a private residence, robbery, arson, incest, bigamy and abortion, the court shall suspend sentence upon application made therefor in writing by the defendant, which shall be sworn to and filed before the trial begins, when the punishment assessed by the jury shall not exceed five years confinement in the penitentiary; and in all cases where defendant is charged with felonies other than those named in section 1 hereof [this article], when the defendant has no counsel, it shall be the duty of the court to inform the defendant of his right to make such application, and the court shall appoint counsel to prepare and present same if desired by defendant; provided, that in no case shall sentence be suspended except when the proof shall show and the jury shall find in their verdict that the defendant has never before been convicted of a felony in this state or any other state. This Act is not to be construed as preventing the jury from passing on the guilt or innocence of the defendant, but he may enter his plea of not guilty at the same time with said affidavit. (Acts 1911, p. 67, superseded; Acts 1913, p. 8, sec. 1.)

As to constitutionality of this article see Snodgrass v. S., 150 S. W. 162, 178; Baker v. S., 158 S. W. 998; King v. S., 162 S. W. 890; Cook v. S., 165 S. W. 573.

Art. 865c. Testimony as to defendant's reputation and criminal history.—The court shall permit testimony and submit the question as to the general reputation of defendant to enable the jury to determine whether to recommend the suspension of sentence, and as to whether the defendant has ever before been convicted of a felony; such testimony shall be heard and such question submitted only upon the request in writing by the defendant; provided, that in all cases sentence shall be suspended if the jury recommends it in their verdict. Provided further, that in such cases, neither the verdict of conviction nor the judgment entered thereon shall become final, except under the conditions and in the manner and at the time provided for by section 4 of this Act [art. 865e]. (Id. sec. 2.)

Art. 865d. Form of judgment; "good behavior" defined.—When sentence is suspended the judgment of the court on that subject shall be that sentence of the judgment of conviction shall be suspended during the good behavior of the defendant. By the term "good behavior" is meant that the defendant shall not be convicted of any felony during the time of such suspension. (Id. sec. 3.)

Art. 865e. Conviction of other felony; pronouncement of sentence.—Upon the final conviction of the defendant of any other felony, pending the suspension of sentence, the court granting such suspension shall cause a capias to issue for the arrest of the defendant, if he is not then in the custody of such court, and upon the execution of a capias, and during a term of the court shall pronounce sentence upon the original judgment of conviction, and shall cumulate the punishment of the first with the punishment of any subsequent conviction or convictions, and in such cases no new trial shall be granted in the first conviction. (Id. sec. 4.)

Art. 865f. Expiration of suspension period; disposition of cause; effect of judgment of conviction.—In any case of suspended sentence, as provided herein, upon the expiration of the time assessed as punishment by the jury, the defendant may make his written and sworn application for a new trial and dismissal of such case, stating therein that since such former trial and conviction, he has not been convicted of any felony, and that there is not now pending against him any felony charge, which application shall be heard by the court during the first term time after same is filed, and, if it shall appear to the court, upon the hearing of such application, that the defendant has not been convicted of any other felony and that there is not then pending against him any other charge of felony, the court shall enter an order reciting the fact, and shall grant the defendant a new trial and shall then dismiss said cause; provided, further, that if the defendant is prevented from physical disability or other good cause from applying to the court to have the judgment of conviction set aside at the time provided for, he may make such application at the first term when such physical disability or other good cause no longer exists. After the setting aside and dismissal of any judgment of conviction as herein provided for, the fact of such conviction shall not be shown or inquired into for any purpose, except in cases where the defendant has been again indicted for a felony and invokes the benefit of this Act. (Id. sec. 5.)

Art. 865g. Pendency of other charge; extension of suspension period.—If at the expiration of the time assessed by the jury as punishment, there be pending against the defendant any other charge of felony, the court shall, upon application of the defendant, (which shall be in writing, and shall state under his oath that he is not guilty of such charge), further suspend the sentence to await the final disposition of such other prosecution. (Id. sec. 6.)

Art. 865h. Release on recognizance.—When sentence is suspended the defendant shall be released upon his recognizance in such sum as may be fixed by the court during such suspension. (Id. sec. 7.)

Art. 865i. Laws repealed.—That all laws and parts of laws in conflict herewith be and the same are hereby repealed. (Id. sec. 8.)

2. JUDGMENT IN CASES OF MISDEMEANOR

Art. 866. (844) May be rendered in absence of defendant.—The judgment in cases of misdemeanor may be rendered in the absence of the defendant. (O. C. 691.)

Art. 867. (845) (805) Judgment when the punishment is fine only.—When the punishment assessed against a defendant is a pecuniary fine only, the judgment shall be that the state of Texas recover of the defendant the amount of such fine and all the costs of the prosecution, and that the defendant, if present, be committed to jail until such fine and costs are paid, or if the defendant be not present, that a capias forthwith issue commanding the sheriff to arrest the defendant and commit him to jail, until such fine and costs are paid; also, that execution may issue against the property of such defendant for the amount of such fine and costs.

See Jordan v. S., 49 S. W. 371; Spradley v. S., 56 S. W. 114; Kiefel v. S., 94 S. W. 463; Trayler v. S., 106 S. W. 142; Caskey v. S., 108 S. W. 665; Ex parte Spiller, 138 S. W. 1013; Ex parte Cook, 188 S. W. 979.

Art. 868. (846) (806) Judgment when the punishment is other than fine.—When the punishment assessed is any other than a pecuniary fine, the judgment shall specify it, and order its enforcement by the proper process. It shall also adjudge the costs against the defendant, and order the collection thereof, as in other cases.

See Trayler v. S., 106 S. W. 142; Ex parte Spiller, 138 S. W. 1013.

CHAPTER FOUR

EXECUTION OF JUDGMENT

1. COLLECTION OF PECUNIARY FINES

Art. 869. (847) (807) How judgment for fine satisfied and defendant discharged.—When the judgment against a defendant is for a pecuniary fine and the costs of prosecution, he shall be discharged from the same—

1. When the amount of such fine and costs have been fully paid.

2. When the same have been remitted by the proper authority.

3. When the defendant has remained in custody the length of time required by law to satisfy the amount of such judgment, as hereinafter provided.

Art. 870. (848) Recognizances, etc., payable in lawful money.—All recognizances, bail bonds and undertakings of any kind, whereby a party becomes bound to pay money to the state, and all fines and forfeitures of a pecuniary character, shall be collected in the lawful money of the United States only. (O. C. 702.)

Art. 871. (849) When judgment is fine, and defendant is present.—When judgment has been rendered against a defendant for a pecuniary fine, if he is present, he shall be imprisoned in jail, until discharged as provided in article 867; and a certified copy of such judgment shall be sufficient to authorize such imprisonment, without further warrant or process. (O. C. 694, 695.)

Art. 872. (850) (810) When defendant is not present, capias shall issue.—When a pecuniary fine has been adjudged against a defendant, and he is not present, a capias shall forthwith issue for his arrest; and the sheriff shall execute the same by placing the defendant in jail until he is legally discharged.

Art. 873. (851) Capias shall recite what.—Where a capias issues, as provided in the preceding article, it shall state the rendition and amount of the judgment and the amount unpaid thereon, and command the sheriff to take the body of the defendant and place him in jail, until the amount due upon such judgment, and the further costs of collecting the same are paid, or until the defendant is otherwise legally discharged. This writ is sufficient authority to justify the commitment of the defendant to jail. (O. C. 700.)

Art. 874. (852) (812) Capias may issue to any county in the state, etc.—The capias provided for in this chapter may be issued to any county in the state, and shall be executed and returned as in other cases, except that no bail shall be taken in such cases.

Art. 875. (853) Execution may issue for fine and costs.—In all cases of pecuniary fine, an execution may issue for the fine and costs, notwithstanding a capias may have issued for the defendant; and a capias may issue for the defendant, notwithstanding an execution has been issued against his property. The execution shall be collected and returned as in civil actions. (O. C. 695.)

See ante, art. 867.

Art. 876. (854) (814) When execution is satisfied, etc.—When the execution has been collected, the defendant shall be at once discharged; and, whenever the fine and costs have been legally discharged in any way, the execution shall forthwith be returned satisfied, and the defendant discharged.

Art. 877. (855) (815) Further enforcement of the judgment.—When a defendant has been committed to jail in default of the fine and costs adjudged against him, the further enforcement of such judgment shall be in accordance with the law of this state relating to county convicts.

Art. 878. (856) (816) Judgment for fine, etc., may be discharged by imprisonment, when.—When a defendant is convicted of a misdemeanor, and his punishment is assessed at a pecuniary fine, if he makes oath in writing that he is unable to pay the fine and costs adjudged against him, he may be hired out to manual labor, or be put to work in the manual labor workhouse, or on the manual labor farm, or public improvements of the county; or, in case there be no such workhouse, farm or improvements, and, in case the county authorities fail to hire out such convict in accordance with the law regulating county convicts, he shall be imprisoned in the county jail for a sufficient length of time to discharge the full amount of fine and costs adjudged against him, rating such punishment at three dollars for each day thereof. (O. C. 694, 848.)

See Ex parte Reeves, 53 S. W. 1022; Ex parte Rodriquez, 73 S. W. 1050; Ex parte Clayton, 103 S. W. 630; Ex parte Stephens, 127 S. W. 819.

2. ENFORCING JUDGMENT IN MISDEMEANORS WHERE THE PUNISHMENT IS IMPRISONMENT

Art. 879. (857) Copy of judgment sufficient authority for imprisonment.—When, by the judgment of the court, a defendant is to be imprisoned in jail, the sher-

iff shall execute the same by imprisoning the defendant for the length of time required by the judgment; and, for this purpose, a certified copy of such judgment shall be sufficient authority for the sheriff. (O. C. 704.)

See Ex parte Stephens, 127 S. W. 819; Tinker v. S., 179 S. W. 572.

Art. 880. (858) Capias, when punishment is imprisonment.—When a capias is directed to be issued for the apprehension and commitment of a person convicted of a misdemeanor, the penalty of which, or any part thereof, is imprisonment in jail, the writ shall recite the judgment and command the sheriff to place the defendant in jail, to remain the length of time therein fixed; and this writ shall be sufficient to authorize the sheriff to enforce such judgment. (O. C. 705.)

See Ex parte Stephens, 127 S. W. 819.

Art. 881. (859) (819) Defendant shall be discharged, when.—When a defendant has remained in jail the length of time required by the judgment, he shall be discharged; and the sheriff shall then return the copy of the judgment, or the capias under which the defendant was imprisoned, to the proper court, stating how the same has been executed.

Art. 882. (860) (825) Further execution of judgment, etc.—The further execution of the judgment and sentence shall be in accordance with the provisions of the law governing the penitentiaries of the state. The term shall commence from the time of sentence, or, in case of appeal, from the time of affirmance of the sentence by the court of criminal appeals.

See Ex parte Carey, 64 S. W. 241.

3. ENFORCING JUDGMENT IN CAPITAL CASES

Art. 883. (861) Death warrant to be executed, when.—The warrant for the execution of the sentence of death may be carried into effect at any time after eleven o'clock, and before sunset, on the day stated in such warrant. (O. C. 708.)

Art. 884. (862) Executed, how.—The sentence of death shall be executed by hanging the convict by the neck until he is dead. (O. C. 709.)

Art. 885. (863) Shall take place within the walls of the jail, when.—Where there is a jail in the county, and it is so constructed that a gallows can be erected therein, the execution of the sentence of death shall take place within the walls of the jail. (O. C. 710.)

Art. 886. (864) Who shall be present.—Where the sentence of death is executed within the walls of the county jail, the sheriff shall notify any number of physicians or surgeons, not exceeding six, any number of justices of the peace of his county, not exceeding four, and any number of freeholders in the county, not exceeding six, any, or all of whom, may be present, together with such deputies of the sheriff as he may require to be in attendance when the penalty of death is executed. (O. C. 711.)

Art. 887. (865) Reasonable request of convict.—The sheriff shall comply with any reasonable request of the convict; and, where the execution takes place within the walls of the county jail, shall permit such persons to be present (not exceeding five) as he may name. (O. C. 712.)

Art. 888. (866) No torture shall be inflicted.—No torture, or ill-treatment, or unnecessary pain, shall be inflicted upon a prisoner to be executed under the sentence of the law. (O. C. 713.)

Art. 889. (867) Sheriff may order military company to aid.—The sheriff may, when he supposes there will be a necessity, order such number of citizens of his county, or any military or militia company, to aid in preventing the rescue of a prisoner, or to prevent persons not authorized to be present from intruding themselves within the place of execution. (O. C. 715.)

This provision, in so far as it relates to the militia, may be superseded by the militia act of 1905. See Civ. St. arts. 5831, 5832.

Art. 890. (868) (833) When execution can not take place in jail.—When the execution can not take place in the county jail, the sheriff shall select some other place in the county for that purpose; and such place shall be as private as he can conveniently find; and publicity in the execution shall be avoided as far as practicable.

Art. 891. (869) Body of convict shall be buried, how.—The body of a convict shall be decently buried, at the expense of the county, unless demanded by his relatives or friends, in which case, it shall be given to them, and shall never, unless by consent of the convict himself before execution, be delivered to any person for dissection. (O. C. 716.)

Art. 892. (870) Sheriff shall return the warrant, stating, etc.—The sheriff shall immediately return the warrant, stating in his return, indorsed thereon, or attached thereto—

1. The fact, time, place and mode of execution.

2. If the execution do not take place within the jail, the return shall state that there is no jail, or that it is so constructed that a gallows could not have been erected therein.

3. If the execution take place within the jail, the return shall state the names of the physicians, justices of the peace and freeholders present, and the names of all other persons present, if any, and the authority by which they were present.

4. If the execution does not take place within the jail, the return shall state the names of five freeholders of the county who were present.

5. That the body of the convict was decently buried, or delivered to his relatives or friends, naming them, or to some other person, by consent of the convict, naming such person, and naming two or more witnesses to the fact that the convict consented that his body might be delivered to such person. (O. C. 717.)

TITLE 10

APPEAL AND WRIT OF ERROR

Art. 893. (871) (836) State can not appeal.—The state shall have no right of appeal in criminal actions. (Const., art. 5, sec. 26.)

Art. 894. (872) (837) Defendant may appeal.—A defendant in any criminal action, upon conviction, has the right of appeal under the rules hereinafter prescribed.

Offield v. S., 135 S. W. 566; Bostick v. S., 195 S. W. 863; Ryan v. S., 198 S. W. 582; Long v. S., 199 S. W. 619; Ex parte McLoud, 200 S. W. 394.

Art. 895. (873) (838) Appeals from district and county courts.—Appeals from

judgments rendered by the district or county court in criminal actions shall be heard by the court of criminal appeals. (Acts 22d Leg., S. S.)

Art. 895a. Appeals from criminal district court of Harris county.—Appeals and writs of error may be prosecuted from the said criminal district court [Criminal District Court of Harris County (Art. 97m, ante)] to the Court of Criminal Appeals, in the same manner and form as from district courts in like cases. (Acts 1911, p. 113, ch. 67, sec. 15.)

Art. 895b. Appeals from criminal district court of Bowie county.—Appeals and writs of error may be prosecuted from said Criminal District Court [Criminal District Court of Bowie county, ante, art. 97¾] to the court of criminal appeals in criminal cases and to the court of civil appeals, in the same manner and form as from district courts in like cases. (Acts 1918, 4th C. S., ch. 28, sec. 14; Acts 1919, 2d C. S., ch. 8, sec. 14.)

Art. 896. [Omitted.]

This article is omitted from this compilation as having been rendered inoperative by the amendment of art. 16, § 20, of the state Constitution, and by Acts 1919, 2d C. S., ch. 78, ante, Penal Code, arts. 588¼-588¼tt.

Art. 897. (874) (839) From justices of the peace to county court.—Appeals from judgments rendered by justices of the peace and other inferior courts in criminal actions shall be heard by the county court, except in counties where there is a criminal district court, in which counties such appeals shall be heard by such criminal district courts.

See post, arts. 1009, 1010; Cramer v. S., 111 S. W. 931.

Art. 898. (875) Defendant need not be present.—The defendant in a criminal action need not be personally present upon the hearing of his cause in the court of criminal appeals, but he may appear in person in cases where, by law, he is not committed to jail upon appeal. (Acts 22d Leg., S. S.; O. C. 740.)

Art. 899.

The revisers of 1911 overlooked the fact that the above provision superseded art. 633 of the revision of 1895 (art. 646 of the revision of 1911). Inasmuch as the provision is not directly related to appellate procedure the text is taken out of this position and transferred to art. 646, and there appended to the superseded provision with an appropriate explanatory note. The decisions relating to the statute will also be found under art. 646.

Art. 900. Bail not discharged until verdict or judgment; in misdemeanors no discharge until overruling of motion for new trial.—Where the Defendant in any criminal case pending in the Courts of this State, is on bail when the trial commences the same shall not thereby be considered as discharged until the jury shall return into court a verdict of guilty, or in case of trial without a jury, a judgment finding the defendant guilty has been rendered and the defendant is taken in custody by the Sheriff; and he shall have the same right to have and remain on bail during the trial of his case and up to the return into court of such verdict or judgment of guilty, as under the law he has before the trial commences; but immediately upon the return into court of such verdict or the rendition of a judgment of guilty, he shall be placed in the custody of the sheriff, and his bail considered discharged. Provided that where the defendant is convicted in a misdemeanor case and is on bail when the trial commences, the same shall not thereby be considered discharged until the defendant's motion for a new trial shall have been overruled by the court. (Acts 1907, p. 31, sec. 3; O. C. 721; Acts 1917, ch. 110, sec. 1.)

See Ex parte Smith, 64 S. W. 1052; White v. S., 151 S. W. 826; Ex parte Henderson, 197 S. W. 714.

The revisers of 1911 overlooked the fact that the above provision superseded art. 635, and perhaps art. 636 of the revision of 1895 (arts. 648, 649 of the revision of 1911). Inasmuch as this provision has nothing to do with practice on appeal the text is removed from this place in the statute, and in this compilation is appended to art. 648, ante, with an explanatory note. The decisions relating to the subject of the article will be found under arts. 648 and 649, ante.

Art. 901. (876) In felony cases where defendant is convicted and appeals, shall have right to remain on bail, when.—In all cases of felony, where, upon the trial thereof, the defendant has been convicted, and his punishment assessed at confinement in the penitentiary for any period of fifteen years or less, and where an appeal is taken from such conviction, and judgment rendered thereon, the defendant thus convicted shall have the right to remain on bail during the pendency of said appeal, and until the judgment of the trial court is affirmed by the court of criminal appeals, and the mandate thereof filed with the clerk of such trial court, by entering into a recognizance in said court, in such sum as is fixed by the court. (Acts 1907, p. 31, sec. 3.)

Art. 902. When defendant appeals and bail is allowed, shall be committed to jail, until he enters into recognizance.—Where the defendant appeals in any case of felony from the judgment of the district court, and where bail is allowed by the provisions of this act, he shall, if he be in custody, be committed to jail, unless he enters into a recognizance to appear as hereinafter required; and, if he be in custody, his notice of appeal shall have no effect whatever to release him from such custody until he enters into recognizance; and no recognizance shall be taken or allowed, unless the defendant is in custody of the sheriff at the time thereof. (Id. p. 31, sec. 4.)

Art. 903. Form of such recognizance.—In all appeals from judgments and convictions for felonies where bail is hereby allowed, the following form of recognizances shall be considered sufficient:

"The State of Texas
vs.
A. B.
No. ———"

"This day came into open court A. B., defendant in the above entitled cause, who, together with C. D. and E. F., sureties, acknowledged themselves jointly and severally indebted to the state of Texas in the sum of $———, conditioned that the said A. B., who stands charged with the offense of ——— in this court, and who has been convicted of the offense of ——— in this court, shall appear before this court from day to day, and from term to term, of the same, and not depart therefrom, without leave of this court, in order to abide a judgment of the court of criminal appeals of the state of Texas in this case." (Id. p. 31, sec. 5.)

Art. 904. Where defendant fails to enter into recognizance during term time, he may give bail in amount fixed by court, to be approved by sheriff.—If, for any cause, the defendant fails to enter into and make the recognizance mentioned in article 903 during the term of court, but gave notice of and took an appeal from such conviction during such term, he shall, notwithstanding such failure, be permitted to give bail and obtain his release from custody by giving, after the expiration of such term of court and in vacation, his bail bond to the sheriff, with two or more good and sufficient sureties, in which the defendant, together with his sureties, shall acknowledge themselves severally indebted to the state of Texas in the sum of money fixed by the court, upon the conditions as are provided for in recognizances in article 903; but before such bail bond shall be accepted and the defendant released from custody by reason thereof, the same must be approved by such sheriff and the court trying said cause, or his successor in office. That when said bond is so given, approved and accepted, the defendant shall be released from custody. (Id. p. 32, sec. 6.)

Art. 905. Procedure in fixing and forfeiting recognizance and bail bond.—The amount of such recognizance and bail bond shall be fixed by the court in which judgment was rendered, and the sufficiency of the security thereon shall be tested, and the same proceedings had as in cases of forfeitures in other cases of recognizances and bail bonds. (Id. p. 32, sec. 7.)

Art. 906. On receipt of mandate of court of criminal appeals affirming judgment, duty of clerk to issue capias.—When the clerk of any district court from whose judgment an appeal has been taken in felony cases wherein bail has been allowed shall receive the mandate of the court of criminal appeals affirming such judgment, he shall immediately file the same in said court, and forthwith shall issue a capias for the arrest of the defendant, for the execution of the sentence of the court, which shall recite the fact of conviction, setting forth the offense and the judgment and sentence of the court, the appeal from and affirmance of such judgment and the filing of such mandate, and shall command the sheriff to arrest and take into his custody the defendant, and place him in jail and therein keep him until delivered to the proper penitentiary authorities, as directed by said sentence. The sheriff shall forthwith execute such capias by placing the defendant in jail and therein keep him as directed. (Id. p. 32, sec. 8.)

Art. 907. Capias may issue to what county and executed how.—The capias provided for by this law may be issued to any county of this state, and shall be executed and returned as in other felony cases, except that no bail shall be taken in such cases. (Id. p. 32, sec. 9.)

Art. 908. Right of appeal not to be abridged.—The right of appeal, as otherwise provided by law, shall in no wise be abridged by the provisions of this chapter. (Id. p. 33, sec. 10.)

Art. 909. If no jail in county, etc.—If the jail of the county is unsafe, or if there be no jail, the judge of the district court may, either in term time or in vacation, order the prisoner to be committed to the jail, of the nearest county in his district, which is safe. (O. C. 721; Acts 1876, p. 217.)

Art. 910. (878) Appeal in felony cases prosecuted immediately.—An appeal in a felony case may be prosecuted immediately to the term of the court of criminal appeals pending at the time the appeal is taken, or to the first term of such court after such appeal, without regard to the law governing appeals in other cases; and it shall be the duty of the clerk, upon the application of either the state or the defendant, to make out and forward, without delay to the court of criminal appeals, a transcript of the case. (Acts 22d Leg., S. S.; Acts 1876, p. 217.)

Roberts v. S., 136 S. W. 483.

Art. 911. (879) When transcript may be filed.—The transcript may be filed in the court of criminal appeals, and the case tried and determined in said court, while the district court in which the conviction was had is yet in session; and, upon an affirmance of the judgment of conviction by the court of criminal appeals, sentence may be pronounced by the district court, at the same term at which the conviction was had, or any term thereafter. (Id.)

Art. 912. (880) When defendant escapes, pending an appeal.—In case the defendant, pending an appeal in a felony case, shall make his escape from custody, the jurisdiction of the court of criminal appeals shall no longer attach in the case; and, upon the fact of such escape being made to appear, the court shall, on motion of the attorney general, or attorney representing the state, dismiss the appeal; but the order dismissing the appeal shall be set aside, if it shall be made to appear that the accused had voluntarily returned to the custody of the officer from whom he escaped, within ten days. (Id.)

See Carter v. S., 47 S. W. 979; Johnson v. S., 54 S. W. 598; Isom v. S., 70 S. W. 23; Hines v. S., 70 S. W. 23; Clay v. S., 197 S. W. 1106; Gilbert v. S., 203 S. W. 892; Gibson v. S., 203 S. W. 893.

Art. 913. (881) (846) Sheriff shall report escape, etc.—When any such escape of a prisoner occurs, the sheriff who had him in custody shall immediately report the fact, under oath, to the district or county attorney of the county in which the conviction was had, who shall forthwith forward such report to the attorney general at the court to which the transcript was sent; and such report shall be sufficient evidence of the fact of such escape to authorize the dismissal of the appeal.

Art. 914. (882) Appeal may be taken, when.—An appeal may be taken by the defendant at any time during the term of the court at which the conviction is had. (O. C. 725.)

See Harkrider v. S., 90 S. W. 652; Young v. S., 131 S. W. 413; Offield v. S., 135 S. W. 566; Offield v. S., 135 S. W. 568.

Art. 915. (883) Appeal how taken; entry of notice after term.—An appeal is taken by giving notice thereof in open court at the term of court at which conviction is had, and having the same entered of record; provided, that if notice of appeal is given at the term at which the conviction is had, and the same is not entered of record, by making proof of that fact, the judge of the court

trying the cause may order same entered of record either in term time or vacation by entering in the minutes of his court an order to that effect, which said entry when so made shall bear date as of date when notice of appeal was actually given in open court. (O. C. 726; Acts 1915, ch. 104, sec. 1.)

Young v. S., 53 S. W. 1028; Scott v. S., 56 S. W. 926; Roan v. S., 65 S. W. 1069; Beck v. S., 76 S. W. 923; Love v. S., 90 S. W. 169; Harkrider v. S., 90 S. W. 652; Dennis v. S., 99 S. W. 1016; Teague v. S., 111 S. W. 405; Lenox v. S., 116 S. W. 816; Clay v. S., 120 S. W. 418; Young v. S., 131 S. W. 413; Offield v. S., 135 S. W. 566; Ex parte Martinez, 145 S. W. 959; Tores v. S., 166 S. W. 523; Bostick v. S., 195 S. W. 863; Castoreno v. S., 200 S. W. 1082.

Art. 916. (884) Effect of appeal.—The effect of an appeal is to suspend and arrest all further proceedings in the case in the court in which the conviction was had, until the judgment of the appellate court is received by the court from which the appeal was taken; provided, that in cases where, after notice of appeal has been given, the record, or any portion thereof, is lost or destroyed, it may be substituted in the lower court, if said court be then in session; and, when so substituted, the transcript may be prepared and sent up as in other cases. In case the court from which the appeal was taken be not then in session, the court of appeals shall postpone the consideration of such appeal until the next term of said court from which said appeal was taken; and the said record shall be substituted at said term as in other cases. (O. C. 727.)

See Quarles v. S., 39 S. W. 668; Saragosa v. S., 46 S. W. 250; Quarles v. S., 50 S. W. 457; Boone v. S., 59 S. W. 266; McHenry v. S., 61 S. W. 311; Reed v. S., 61 S. W. 925; Saufley v. S., 90 S. W. 640; Hinman v. S., 113 S. W. 280; Nichols v. S., 115 S. W. 1196; Ex parte Jones, 129 S. W. 632; Offield v. S., 135 S. W. 566; James v. S., 138 S. W. 408; Tores v. S., 166 S. W. 523; Henson v. S., 168 S. W. 89; Sullenger v. S., 182 S. W. 1140; Ballew v. S., 199 S. W. 1109.

Art. 917. (885) Appeal in felony case after sentence.—Where the defendant in a felony case fails to appeal until after sentence has been pronounced, the appeal shall, nevertheless, be allowed, if demanded, and has the effect of superseding the execution of the sentence and all other proceedings as fully as if taken at the proper time. (O. C. 728.)

Barr v. S., 136 S. W. 454.

Art. 918. (886) When defendant appeals in misdemeanor, must give recognizance.—When the defendant appeals in any case of misdemeanor from the judgment of the district or county court, he shall, if he be in custody, be committed to jail unless he enter into recognizance or bail bond as provided by law. If for any cause the defendant fails to enter into recognizance or bail bond during the term at which he was tried, but gave notice and took an appeal from such conviction, he shall be permitted to give bail and obtain his release from custody by giving, after the expiration of such term of court, his bail and bond to the sheriff with two or more good and sufficient sureties, in an amount to be fixed by the court, in which the defendant and his sureties shall acknowledge themselves jointly and severally indebted to the State of Texas in such sum, and upon the same condition as provided for in recognizance on appeal. But before the defendant shall be released on such bail bond the same must be approved by the sheriff or the judge trying the cause or his successor in office. When such bail bond is accepted and approved, the defendant shall be released from custody the same as though he had entered into recognizance during the term of court at which he was convicted. (O. C. 722; Acts 1919, ch. 18, sec. 1.)

See Faulkner v. S., 55 S. W. 60; Buechert v. S., 55 S. W. 492; Walton v. S., 66 S. W. 546; Green v. S., 76 S. W. 926; Childress v. S., 81 S. W. 302; Roberts v. S., 89 S. W. 828; Roberson v. S., 132 S. W. 766; Merfett v. S., 135 S. W. 573; Terry v. S., 142 S. W. 875; Hamilton v. S., 150 S. W. 775; Wells v. S., 150 S. W. 899; Knowlton v. S., 169 S. W. 674; Williams v. S., 206 S. W. 684.

Art. 919. (887) Form of recognizance.—In appeal cases of misdemeanor, the following form of recognizance shall be sufficient, and, when complied with, shall confer jurisdiction upon the court of criminal appeals, of such appeals:

"State of Texas,
vs.
A. B.
No. ——— "

"This day came into open court A. B., defendant in the above entitled cause, who, together with C. D. and E. F., his sureties, acknowledge themselves severally indebted to the state of Texas in the penal sum of ——— dollars; conditioned, that the said A. B., who has been convicted in this cause of a misdemeanor, and his punishment assessed at ———, as more fully appears by the judgment of conviction duly entered in this cause, shall appear before this court from day to day, and from term to term of the same, and not depart, without leave of this court, in order to abide the judgment of the court of criminal appeals of the state of Texas in this case."

The amount of such recognizance, shall be fixed by the court in which the judgment was rendered, and the sufficiency of the security thereon shall be tested, and the same proceedings had, in case of forfeiture, as in other cases of recognizance. (Acts 22d Leg., S. S., ch. 16; amended, Act 1907, p. 5; Acts 1871, p. 61.)

See Gull v. S., 42 S. W. 303; Stewart v. S., 44 S. W. 513; Swope v. S., 50 S. W. 715; Cyrus v. S., 50 S. W. 716; Heath v. S., 50 S. W. 952; Donnelly v. S., 51 S. W. 228; Allen v. S., 53 S. W. 103; Westfall v. S., 53 S. W. 629; Secrest v. S., 53 S. W. 630; Brewer v. S., 53 S. W. 859; Clark v. Finley, 54 S. W. 343; Chumley v. S., 55 S. W. 492; Wade v. S., 56 S. W. 337; McCormack v. S., 58 S. W. 1006; Luke v. S., 59 S. W. 44; Wellborn v. S., 61 S. W. 306; Seguin v. S., 62 S. W. 753; Greer v. S., 70 S. W. 23; Kapps v. S., 70 S. W. 83; Hogue v. S., 70 S. W. 217; Bertoni v. S., 71 S. W. 963; Doran v. S., 72 S. W. 585; Adams v. S., 72 S. W. 588; Brock v. S., 72 S. W. 599; Hannon v. S., 73 S. W. 1053; Heinen v. S., 74 S. W. 776; Franklin v. S., 76 S. W. 759; Green v. S., 76 S. W. 926; Cater v. S., 77 S. W. 12; Bourland v. S., 77 S. W. 455; Jones v. S., 78 S. W. 226; Holcomb v. S., 78 S. W. 231; Cooper v. S., 78 S. W. 346; Allen v. S., 79 S. W. 308; Id., 79 S. W. 537; Angel v. S., 80 S. W. 380; Samamirgo v. S., 80 S. W. 996; Parish v. S., 82 S. W. 517; Mallard v. S., 83 S. W. 1114; Smith v. S., 86 S. W. 333; Hannon et al. v. S., 87 S. W. 152; Martin v. S., 89 S. W. 642; Dove v. S., 89 S. W. 646; Burton v. S., 90 S. W. 498; Chancey v. S., 90 S. W. 637; Weil v. S., 91 S. W. 231; Elhert v. S., 92 S. W. 40; Bird v. S., 134 S. W. 687; Engman v. S., 135 S. W. 565; Merfett v. S., 135 S. W. 573; Harden v. S., 136 S. W. 768; Goodwin v. S., 138 S. W. 399; Campbell v. S., 138 S. W. 607; Ferguson v. S., 147 S. W. 239; Lockett v. S., 148 S. W. 305; Sanders v. S., 158 S. W. 291; Darnell v. S., 161 S. W. 971; Todd v. S., 180 S. W. 116; Welch v. S., 199 S. W. 485.

Art. 920. (888) Appeal shall not be entertained without sufficient recognizance.—The court of criminal appeals shall

not entertain jurisdiction of any case in which a recognizance is required by law, unless such recognizance shall comply substantially with the form presented in the preceding article. (Id.)

See Lucas v. S., 95 S. W. 1055; Engman v. S., 135 S. W. 565; Merfett v. S., 135 S. W. 573; Knowlton v. S., 169 S. W. 674; Todd v. S., 180 S. W. 116; Whitcomb v. S., 190 S. W. 484; Welch v. S., 199 S. W. 485; Berry v. S., 203 S. W. 901.

Art. 920a. Appeals to what courts; trial de novo; appeals how governed.—Appeals from judgments rendered by such corporation courts shall be heard by the county court, except in cases where the county courts have no jurisdiction, in which counties such appeals shall be heard by the district court of such counties, unless in such county there is a criminal district court, in which case the appeal shall be from the corporation courts to the said criminal district court; and, in all such appeals to such county court, district court, or criminal district court, the trial shall be de novo, the same as if the prosecution had been originally commenced in that court. Said appeals shall be governed by the rules of practice and procedure for appeals from justices' courts to the county court, as far as the same may be applicable. (Acts 1899, p. 43, sec. 16.)

See ante, art. 109a, and note thereunder.

Art. 921. (889) Appeals from justices' and other inferior courts.—In appeals from the judgments of Justices of the Peace and other inferior courts to the County Court, the defendant shall, if he be in custody, be committed to jail unless he give bond with good and sufficient security, to be approved by the court from whose judgment the appeal is taken, in an amount not less than double the amount of fine and costs adjudged against him, payable to the State of Texas; provided, said bond shall not in any case be for a less sum than fifty dollars, said bond shall describe the judgment appealed from with sufficient certainty to indentify it, shall recite that in said cause the defendant was convicted on complaint, or information, charging him with a misdemeanor, and has appealed to the County Court, and shall be conditioned that the defendant shall well and truly make his personal appearance before the County Court of said county instanter, if said county court be then in session, and if said court be not in session then at its regular term, stating the time and place of holding the same, and there remain from day to day and term to term, and answer in said cause on trial in said Court. (Acts 1901, p. 291; Acts 1876, p. 167, secs. 37, 38; Acts 1918, 4th C. S., ch. 21, sec. 1.)

See Ward v. S., 43 S. W. 985; Shields v. S., 57 S. W. 670; Thielen v. S., 65 S. W. 533; Martin v. S., 69 S. W. 508; Xydias v. S., 76 S. W. 761; Day v. S., 80 S. W. 373; Russell v. S., 84 S. W. 589; Holland v. S., 88 S. W. 361; McCarty v. S., 94 S. W. 899; Bunton v. S., 108 S. W. 373; Anderson v. S., 166 S. W. 1164; Burt v. S., 186 S. W. 770.

Art. 922. When appeal bond provided for in preceding article is filed, appeal is perfected.—In appeals from the judgment of justices of the peace and other inferior courts, when the appeal bond provided for in article 921 of the Code of Criminal Procedure of the state of Texas, has been filed with the justice or court trying the same, the appeal in such case shall be held to be thereby perfected; and no appeal shall be dismissed on account of the failure of the defendant to give notice of appeal in open court, nor on account of any defect in the transcript. (Acts 1899, p. 233.)

See McKennon v. S., 60 S. W. 41; Dennis v. S., 99 S. W. 1016; Burt v. S., 186 S. W. 770.

Art. 923. When appeal bond or recognizance is defective, appellate court may allow appellant to file new bond.—When an appeal has been or shall be taken from the judgment of any of the courts of this state, by filing a bond or entering into a recognizance within the time prescribed by law in such cases, and it shall be determined by the court to which appeal is taken that such bond or recognizance is defective in form or substance, such appellate court may allow the appellant to amend such bond or recognizance by filing a new bond, on such terms as the court may prescribe. (Acts 1905, p. 224.)

See Burton v. S., 90 S. W. 498; Moore v. S., 90 S. W. 499; Chancey v. S., 90 S. W. 632; Knowlton v. S., 169 S. W. 674; Haverbekken v. S., 200 S. W. 524; Berry v. S., 203 S. W. 901.

Art. 924. (890) (855) Appeal bond shall be given within what time.—If the defendant is not in custody, a notice of appeal shall have no effect whatever until the required appeal bond has been given and approved; and such appeal bond shall, in all cases, be given within ten days after the judgment of the court refusing a new trial has been rendered, and not afterward.

See McHowell v. S., 53 S. W. 630; Guenzel v. S., 80 S. W. 371; Russell v. S., 84 S. W. 589; Ivey v. S., 87 S. W. 343; Burt v. S., 186 S. W. 770.

Art. 925. (891) (857) Trial in county court shall be de novo.—In all appeals to justices' and other inferior courts to the county court, the trial shall be de novo in the county court, the same as if the prosecution had been originally commenced in that court. (Const. art. 5, sec. 16.)

See Ex parte Morales, 53 S. W. 107; Horn v. S., 150 S. W. 948.

Art. 926. (892) (857) Original papers, etc., shall be sent up.—In appeals from justices' and other inferior courts, all the original papers in the case, together with the appeal bond, if any, and together with a certified transcript of all the proceedings had in the case before such court, including a bill of the costs, shall, without delay, be delivered to the clerk of the county court of the county in which the conviction was had, who shall file the same and docket the case immediately.

Art. 927. (893) (858) Witnesses need not be again summoned, etc.—In the cases mentioned in the preceding article, the witnesses who have been already summoned or attached to appear in the case before the court below, shall appear before the county court without further process; and, in case of their failure to do so, the same proceedings may be had as if they had been originally summoned or attached to appear before the county court.

Art. 928. (894) (859) Rules governing the taking, etc., of appeal bonds.—The rules governing the taking and forfeiture of bail bonds shall govern appeal bonds, and the forfeiture and collection of such appeal bonds shall be in the county court to which such appeal is taken.

Art. 929. (895) Clerk shall prepare transcript in all cases appealed.—It is the duty of the clerk of a court from which an

appeal is taken to prepare, as soon as practicable, a transcript in every case in which an appeal has been taken; which transcript shall contain all the proceedings had in the case, and shall conform to the rules governing transcripts in civil cases. (O. C. 729.)

Art. 930. (896) Transcript in felony case to be prepared first.—The clerk shall prepare transcripts in felony cases that have been appealed in preference to cases of misdemeanor, and shall prepare transcripts in all criminal cases appealed in preference to civil cases. (O. C. 729.)

Crowell v. S., 148 S. W. 570; Northcutt v. S., 158 S. W. 1004; McElroy v. S., 172 S. W. 1144.

Art. 931. (897) Transcript in felony cases, how forwarded.—As soon as a transcript is prepared, the clerk shall forward the same by mail or other safe conveyance, charges paid, inclosed in an envelope, securely sealed, directed to the clerk of the court of criminal appeals. (Acts 22d Leg., ch. 16, sec. 34; O. C. 731.)

See Pilot v. S., 43 S. W. 112; Burks v. S., 55 S. W. 826; Dyer v. S., 68 S. W. 685; McElroy v. S., 172 S. W. 1144; McDaniel v. S., 186 S. W. 320.

Art. 932. (898) Clerk to make certified list of certain cases.—The clerk shall, immediately after the adjournment of the court at which appeals in criminal actions may have been taken, make out a certificate under his seal of office, exhibiting a list of all such causes which have been decided, and in which the defendant has appealed. This certificate shall show the style of the cause upon the docket, the offense of which the defendant stands accused, the day on which judgment was rendered, and the day on which the appeal was taken; which certified list he shall transmit, post paid, to the clerk of the court of criminal appeals. (Id. sec. 35; O. C. 732.)

Art. 933. (899) Certificates to be filed.—The clerk of the court of criminal appeals shall file the certificate provided for in the preceding article, and notify the attorney general that the same has been received. (Id. sec. 36; O. C. 733.)

Art. 934. (900) Notice to clerk as to transcripts.—When it appears, by the certificate provided for in the preceding article, that an appeal has been taken in any case in which the transcript has not been received by the clerk of the court of criminal appeals within the time required by law for filing transcripts in civil actions, the clerk of the court of criminal appeals shall immediately notify the clerk of the proper court by mail that such transcript has not been received. (Id. sec. 37; O. C. 734–5.)

Art. 935. (901) Same subject.—The clerk receiving notification as provided in the preceding article shall, without delay, prepare and forward another transcript of the case as in the first instance, and shall notify the clerk of the court of criminal appeals, by letter sent by mail, of the fact that such transcript has been forwarded, and the day on which and the manner in which the same was forwarded. (Id. sec. 38; O. C. 735.)

Art. 936. (902) Clerk to file and docket appeals, when.—The clerk of the court of criminal appeals shall receive, file and docket appeals in criminal actions, under such rules as may be prescribed by the court; except in cases of felony, a transcript may be filed, and the case heard and determined at any time during the term to which the appeal is taken. (Id. sec. 39; O. C. 739.)

Art. 937. (903) Appeals, when to be determined.—The court of criminal appeals shall hear and determine appeals in criminal actions at the earliest time it may be done, with due regard to the rights of parties and proper administration of justice. (Id. sec. 40; O. C. 741.)

Art. 938. (904) Judgment on appeal.—The court of criminal appeals may affirm the judgment of the court below, or may reverse and remand for a new trial, or may reverse and dismiss the case, or may reform and correct the judgment, as the law and the nature of the case may require; but, in all cases, the court shall presume that the venue was proven in the court below; that the jury was properly impaneled and sworn; that the defendant was arraigned; that he pleaded to the indictment; that the charge of the court was certified by the judge, and filed by the clerk of the court before it was read to the jury, unless such matters were made an issue in the court below, and it affirmatively appears to the contrary by a bill of exceptions, properly signed and allowed by the judge of the court below, or proven up by by-standers, as is now provided by law, and incorporated in the transcript as required by law. In all criminal cases by it decided, the court of criminal appeals shall deliver a written opinion, setting forth the reason for such decision. (Id. sec. 41; amended Acts 1897, p. 11; O. C. 742.)

See Small v. S., 38 S. W. 798; Belcher v. S., 44 S. W. 1106; Logan v. S., 48 S. W. 575; Bullard v. S., 50 S. W. 348; Webb v. S., 55 S. W. 493; Burks v. S., 55 S. W. 824; Wynne v. S., 55 S. W. 837; Toler v. S., 56 S. W. 917; Scott v. S., 62 S. W. 419; Turner v. S., 68 S. W. 511; Jackson v. S., 62 S. W. 914; Thompson v. S., 80 S. W. 623; Laudermilk v. S., 83 S. W. 1107; Sims v. S., 91 S. W. 579; Miller v. S., 91 S. W. 582; Burk v. S., 95 S. W. 1064; McCorquodale v. S., 98 S. W. 879; Noble v. S., 99 S. W. 996; Robinson v. S., 126 S. W. 276; Patton v. S., 136 S. W. 42; Black v. S., 151 S. W. 1053; Lane v. S., 152 S. W. 897; Martinez v. S., 153 S. W. 886; Monroe v. S., 157 S. W. 154; Davis v. S., 158 S. W. 283; Thompson v. S., 160 S. W. 685; Veherana v. S., 160 S. W. 711; Belcher v. S., 161 S. W. 459; Brown v. S., 162 S. W. 339; Johnson v. S., 162 S. W. 512; Davis v. S., 163 S. W. 442; Park v. S., 179 S. W. 1152; Fondren v. S., 179 S. W. 1170; Baker v. S., 187 S. W. 949; Lyons v. S., 189 S. W. 269; Howard v. S., 192 S. W. 770, L. R. A. 1917D, 391; Allen v. S., 199 S. W. 633; Miller v. S., 200 S. W. 389; Anselmo v. S., 200 S. W. 523; Phillips v. S., 200 S. W. 1091; Bashara v. S., 206 S. W. 359.

Art. 939. (905) Cases remanded, when.—The court of criminal appeals may reverse the judgment in a criminal action, as well upon the law as upon the facts; but, when a cause is reversed for the reason that the verdict is contrary to the weight of evidence, the same shall in all cases be remanded for new trial. (Act 22d Leg. ch. 16, sec. 42; O. C. 744.)

Art. 940. (906) Duty of clerk after judgment.—As soon as the judgment of the court of criminal appeals is rendered, the clerk shall make out the proper certificate of the proceedings had and judgment rendered, and transmit the same by mail to the clerk of the proper court, or deliver the mandate to the defendant or his counsel when the decision is favorable to the defendant, if requested to do so, unless he is instructed by the court to withhold the mandate to any particular time. (Id. sec. 43; O. C. 743.)

Art. 941. (907) Mandate to be filed.—When the certificate of the judgment and

proceedings in the court of criminal appeals shall be received by the proper clerk, he shall file the same with the original papers of the cause, and note the same upon the docket of the court. (Id. sec. 44; O. C. 746.)

Art. 942. (908) Sentence shall be pronounced in felony case, when.—In cases of felony, where the judgment is affirmed, if the district court be in session when the mandate is received, that court shall proceed to pronounce sentence during the term at which the mandate is received; or, in case sentence can not then be pronounced, it may be pronounced at the next or any subsequent term of such court. (O. C. 747.)

Art. 943. (909) Same subject.—If the mandate be received in vacation, and the judgment in a case of felony has been affirmed, sentence shall be pronounced during the term of the court next succeeding the time at which the same was received; or, in case it can not be pronounced at any subsequent term of the court. (O. C. 748.)

Art. 944. (910) In cases of misdemeanor, when judgment has been affirmed.—In cases of misdemeanor, where the judgment has been affirmed, no proceedings need be had after filing the mandate, except to forfeit the recognizance of the defendant, or to issue a capias for the defendant, or an execution against his property, to enforce the judgment of the court, whether of fine or imprisonment, or both, in the same manner as if no appeal had been taken. (O. C. 749.)

See Carleton v. S., 73 S. W. 1044.

Art. 945. (911) (876) New trial.—Where the court of criminal appeal awards a new trial to the defendant, the cause shall stand as it would have stood in case the new trial had been granted by the court below. (Acts 22d Leg., S. S. ch. 16, sec. 45.)

Art. 946. (912) Motion in arrest of judgment.—Where the defendant's motion in arrest of judgment was overruled, and it is decided on appeal that the same ought to have been sustained, the cause shall stand as if the motion had been sustained, unless the court of criminal appeals, in its judgment, directs the cause to be dismissed, and the defendant wholly discharged. (Id. sec. 46; O. C. 751.)

Art. 947. (913) Defendant may be discharged, when.—Where the court of criminal appeals reverses a judgment, and directs the cause to be dismissed, the defendant, if in custody, must be discharged; and the clerk of the court of criminal appeals shall transmit to the officer having custody of defendant an order to that effect; said order shall be transmitted by telegraph or mail, immediately upon the dismissal of the cause. (Id. sec. 47; O. C. 753.)

Art. 948. (914) (879) When felony case is reversed, etc.—When a felony case upon appeal is reversed and remanded for a new trial, the defendant shall be released from custody, upon his giving bail as in other cases when he is entitled to bail; and the clerk of the court of criminal appeals shall transmit to the officer having custody of the defendant an order to that effect. (Id. sec. 48.)

Art. 949. (915) May make rules.—The court of criminal appeals may make rules of procedure as to the hearing of criminal actions upon appeals; but in every case at least two counsel for the defendant shall be heard, if they desire it, either by brief or by oral or written argument, or both, as such counsel shall deem proper. (Id. sec. 49; O. C. 745.)

Art. 950. (916) Appeal in habeas corpus.—When the defendant appeals from the judgment rendered on the hearing of an application under habeas corpus, a transcript of the proceedings in the cause shall be made out and certified to, together with all the testimony offered, and shall be sent up to the court of criminal appeals for revision. This transcript, when the proceedings take place before the court in session, shall be prepared and certified by the clerk thereof; but when had before a judge in vacation, the transcript may be prepared by any person, under direction of the judge, and certified by such judge. (Id. sec. 50; O. C. 754.)

See Ex parte Overstreet, 46 S. W. 929.

Art. 951. (917) Defendant need not be present.—The defendant need not be personally present upon the hearing of an appeal in case of habeas corpus. (Id. sec. 51; O. C. 752.)

Art. 952. (918) Habeas corpus, when heard.—Cases of habeas corpus, taken to the court of criminal appeals by appeal, shall be heard at the earliest practicable time. (Id. sec. 52; O. C. 757.)

Art. 953. (919) Shall be heard upon the record, etc.—The appeal in a habeas corpus case shall be heard and determined upon the law and the facts arising upon record, and no incidental question which may have arisen on the hearing of the application before the court below shall be revised. The only design of the appeal is to do substantial justice to the party appealing. (O. C. 755, 756.)

Art. 954. (920) Orders in the case.—The court of criminal appeals shall enter such judgment, and make such orders as the law and the nature of the case may require, and may make such orders relative to the costs in the case as may seem right, allowing costs and fixing the amount, or allowing no costs at all. (Acts 22d Leg., S. S. ch. 16, sec. 53; O. C. 755–8.)

Ex parte Firmin, 131 S. W. 1113; Ex parte Firmin, 131 S. W. 1116.

Art. 955. (921) Judgment conclusive.—The judgment of the court of criminal appeals in appeals under habeas corpus shall be final and conclusive; and no further application in the same case can be made for the writ, except in cases specially provided for by law. (Id. sec. 54; O. C. 759.)

Ex parte Firmin, 131 S. W. 1116.

Art. 956. (922) Officer failing to obey mandate.—If an officer holding a person in custody fails to obey the mandate of the court of criminal appeals, he is guilty of an offense, and punishable according to the provisions of the penal statutes of this state. (Id. sec. 55; O. C. 760.)

Art. 957. (923) When appellant is detained by other than officer.—If the appellant in a case of habeas corpus be detained by any person other than an officer, the sheriff shall, upon receiving the mandate of the court of criminal appeals, immediately cause the person so held to be discharged; and the mandate shall be sufficient authority therefor. (Id. sec. 56; O. C. 761.)

Art. 958. (924) Judgment to be certified, etc.—The judgment of the court of criminal appeals shall be certified by the clerk thereof to the officer holding the defendant in custody, or when he is held by any person other than an officer, to the sheriff of the proper county. (Id. sec. 57; O. C. 759.)

Ex parte Firmin, 131 S. W. 1116.

Art. 959. (925) Who shall take bail bond.—When, by the judgment of the court of criminal appeals upon cases of habeas corpus, the applicant is ordered to give bail, such judgment shall be certified to the officer holding him in custody; and, if such officer be the sheriff, the bail bond may be executed before him, if any other officer, he shall take the person detained before some magistrate, who may receive a bail bond, and shall file the same in the proper court of the proper county; and such bond shall have the same force and effect as a recognizance, and may be forfeited and enforced in the same manner. (Id. sec. 58; O. C. 763.)

Art. 960. (926) Appeal from judgment on recognizance.—An appeal may be taken by the defendant from every final judgment rendered upon a recognizance, bail bond or bond taken for the prevention or suppression of offenses, where such judgment is for twenty dollars or more, exclusive of costs, but not otherwise; and the proceedings in such case shall be regulated by the same rules which are prescribed in other civil suits. (O. C. 738a.)

Art. 961. (927) Defendant entitled also to writ of error.—The state or the defendant may also have any such judgment as is mentioned in the preceding article, and which may have been rendered in the district or county court, revised upon writ of error, as in other civil suits. (O. C. 738b.)

Ayers v. S., 146 S. W. 171.

Art. 962. (928) Same rules govern as in civil cases.—In the cases provided for in the two preceding articles, the proceedings shall be regulated by the same rules that govern the other civil actions where an appeal is taken or a writ of error issued out. (O. C. 738a.)

Ayers v. S., 146 S. W. 171; Barrett v. S., 151 S. W. 558.

TITLE 11

OF PROCEEDINGS IN CRIMINAL ACTIONS BEFORE JUSTICES OF THE PEACE, MAYORS AND RECORDERS

CHAPTER ONE

GENERAL PROVISIONS

Art. 963. (929) Mayors shall exercise criminal jurisdiction.—The mayor, or the officer by law, exercising the duties usually incumbent upon the mayors of incorporated towns and cities, and recorders thereof, shall exercise, within the corporate limits of their respective towns or cities, the same criminal jurisdiction which belongs to justices of the peace within their jurisdiction, under the provisions of this Code. (O. C. 813.)

This article seems to be entirely superseded by the Corporation Court Act (arts. 109a-109g, 920a, 968b-968j, 1177a, of this Code). But the continued existence of this article, together with articles 108, 964 and 965, is recognized by certain allusions in the opinion in State v. Travis County Court, 174 S. W. 365, as well as by its incorporation in the revision of 1911. See, also, arts. 908 and 918, Rev. St. 1911. It seems evident, however, that in cities, towns, and villages in which a corporation court has been organized the former provisions relating to mayors and recorders have no application. The substance of this article and art. 108 is carried into the new act (art. 109b, ante). Art. 964 is displaced by section 6 of the new act (art. 968b, post). Art. 965 contains provisions not covered by the Corporation Court Act, and would seem to be operative in localities possessing a Corporation Court. Art. 109, ante, in so far as it relates to mayors and recorders in cities having corporation courts is superseded by section 6 of the Corporation Court Act (art. 968b, post). Arts. 1175-1177, relating to fees in mayors' and recorders' courts are likewise superseded by section 15 of the Corporation Court Act (art. 968j, post). Arts. 1185 and 1191 are made applicable to the corporation court by section 12 of the Corporation Court Act (art. 968f, post). Art. 966 may have operative effect as to the corporation court. Art. 967 is not applicable to the corporation court in view of section 14 (art. 968h, post). Arts. 968-970, as far as applicable to mayors and recorders, have no direct counterpart in the corporation court act, unless the general provision adopting the practice of the county court (art. 968b, post) excludes their application to the corporation court.

In Blessing v. City of Galveston (1875) 42 Tex. 641, it was held, that under the constitution, the legislature had power to create municipal judicial tribunals to enforce the police powers delegated to the municipal body. In 1877, the Supreme Court, in Ex parte Towles, 48 Tex. 413, held that the jurisdiction of the various courts named in the constitution was fixed by that document, and the legislature had no power to alter that jurisdiction by the creation of a special tribunal, the powers conferred on which would intrench on the constitutional authority of one of the regularly created courts. The Towles decision was followed in 1884 by the decision in Gibson v. Templeton, 62 Tex. 555. In Ex parte Ginnochio (1891) 30 App. 584, 18 S. W. 82, the Court of Appeals held that a special statute creating a court with exclusive jurisdiction over violations of the Sunday laws in the City of Ft. Worth was unconstitutional in so far as it excluded the jurisdiction of justices of the peace over the same subject. In Leach v. State (1896) 36 S. W. 471, the Court of Criminal Appeals held that the legislature is without power to create a municipal court with jurisdiction concurrent with the constitutional state courts over violations of state laws. The decision in the Leach case, supra, was overruled by the Supreme Court in Harris County v. Stewart (1897) 41 S. W. 650, and it was held that, under the power conferred by Const. art. 5, sec. 1, to "establish such other courts as it (the legislature) may deem necessary," and to "prescribe the jurisdiction and organization thereof," the legislature was authorized to confer on a city recorder's court jurisdiction to try offenses against the general penal laws of the state. In the following year the Court of Criminal Appeals, in Ex parte Fagg, 44 S. W. 294, 40 L. R. A. 212, and Ex parte Coombs (1898) 44 S. W. 854, adhered to its decision in the Leach case, supra, and held that the legislature was without constitutional authority to create a corporation court with jurisdiction exclusive of or concurrent with the regular state courts to try violations of the penal laws. But in 1900 the Court of Criminal Appeals overruled its decisions in the Leach and Coombs cases, and in Ex parte Wilbarger, 55 S. W. 968, held that the act of the 26th Legislature creating the corporation court, was not violative of Const. art. 5, sec. 1, in that it infringed the jurisdiction of the state courts, or of Const. art. 5, sec. 18, limiting the number of justices in each county, and that such act was not invalid as conferring both state and municipal jurisdiction on the same court. In Ex parte Hart, 56 S. W. 341, Ex parte Abrams, 120 S. W. 883, 18 Ann. Cas. 45, and Ex parte Hubbard, 140 S. W. 451, the Court of Criminal Appeals followed its decision in the Wilbarger case, and in State v. Travis County Court, 74 S. W. 365, it held that articles 963, 964, and 965, of the C. of C. P. of 1911, were valid enactments.

There seems no good reason why the Corporation Court Act should not be incorporated into the criminal statutes, the jurisdiction of the court being entirely criminal, and the act creating it being a qualification of, or co-ordinate provision with, articles 108, 109, 963-965, 1175-1177, 1185, 1191. In view of the situation the act is inserted in this compilation as arts. 109a-109g, 920a, 968b-968j, 1177a.

See, also, Ex parte Whitlow, 59 Tex. 273; Davis

v. S., 2 App. 425; Ex parte Boland, 11 App. 159; Ex parte Wilson, 14 App. 592; Bautsch v. S., 11 S. W. 414; McLain v. S., 21 S. W. 365; Corey v. S., 13 S. W. 778; Ex parte Knox, 39 S. W. 670; Holland v. S., 39 S. W. 675; May v. Finley, 43 S. W. 257; Crowley v. City of Dallas, 44 S. W. 865; Ballard v. City of Dallas, 44 S. W. 864; Ex parte Wickson, 47 S. W. 643.

Art. 964. (930) Mayors or recorders governed by same rules as justices of the peace.—The proceedings before mayors or recorders shall be governed by the same rules which are prescribed for justices of the peace; and every provision of this Code with respect to a justice shall be construed to extend to mayors and recorders within the limits of their jurisdiction. (O. C. 814.)

Art. 965. (931) Mayors and justices of the peace have concurrent jurisdiction.—The jurisdiction given to mayors and recorders of incorporated towns and cities shall not prevent justices of the peace from exercising the criminal jurisdiction conferred upon them; but, in all cases where there is an incorporated town or city within the bounds of a county, the justice and the mayor or recorder shall have concurrent jurisdiction within the limits of such town or city. And no person shall be punished twice for the same act or omission, although such act or omission may be an offense against the penal laws of the state, as well as against the ordinances of such city or town; provided, that no ordinance of a city or town shall be valid which provides a less penalty for any act, omission or offense than is prescribed by the statutes, where such act or omission is an offense against the state. (Acts 1879, S. S., ch. 19.)

See Davis v. S., 39 S. W. 937; Mantel v. S., 117 S. W. 855, 131 Am. St. Rep. 818; Neuvar v. S., 163 S. W. 58; State v. Travis County Court, 174 S. W. 365.

Art. 966. In towns and villages embracing territory in two counties, procedure on appeal from; and examining trials before mayors or recorders.—In towns and villages that may be incorporated on territory in two counties, in the trial of the offense 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 county in which the offense may have been committed; and, in cases 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 the district court, as the case may be. (Acts 1897, p. 193.)

Art. 967. (932) Warrant issued by mayor, directed to whom.—Warrants issued by a mayor or recorder are directed to the marshal or other proper officer of the town or city where the criminal proceeding is had; but, in case there be no such officer, the process issued by a mayor or recorder shall be directed to any peace officer within the city, town or county, and shall be executed by such officer. (O. C. 816.)

Art. 968. (933) (898) Warrant issued by mayor, etc., may be executed, where.—When the party for whose arrest a warrant is issued by a mayor or recorder is not to be found within the limits of the incorporation, the same may be executed anywhere within the limits of the county in which such incorporation is included, by the marshal or other proper officer of such town or city, or by any peace officer of such county, and may be executed in any county in the state under the same rules governing warrants of arrest issued by a justice of the peace.

Art. 968a. (406) (362) Right of trial before jury.—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. (Acts 1875, 2 S. S., p. 113, sec. 19.)

The above article was not included in the C. C. P. of 1911.

Art. 968b. Rules of pleading, practice and procedure.—All rules of pleading, practice and procedure now established for the county court shall apply in said corporation court in each such city, town or village, in so far as the same are applicable, except that the proceedings in said court shall be commenced by complaint in the manner and under the regulations, as now provided by law, in cases prosecuted before justices of the peace, and except that the recorder need not charge the jury except upon charges requested in writing by the defendant or his attorney; which such charges he shall have power to give or refuse under the same rules and regulations now applicable to the granting or refusing of such charges by the county judge in criminal cases. Complaints before such court hereby created and established may be sworn to before the recorder, clerk of said court, the city secretary, the city attorney or his deputy, each and all of which officers, for that purpose, shall have power to administer oaths; or it may be sworn to before any other officer authorized by law to administer oaths; provided, that, in all cities, towns and villages in this state not operating under special charters, the rules of pleading, practice and procedure now established for justices courts shall apply to said corporation courts in such cities, towns and villages in so far as the same are applicable. (Acts 1899, p. 42, sec. 6.)

See ante, art. 963, and notes thereunder.

Art. 968c. Complaint, how commenced and concluded; prosecution conducted by city attorney or deputy; county attorney may also represent state; but no fees; process.—In all prosecutions in said court, whether under an ordinance or under the provisions of the Penal Code, the complaint shall commence in the name of the state of Texas, and shall conclude, "against the peace and dignity of the state;" and, where the offense is covered by an ordinance, the complaint may also conclude, as "contrary to the said ordinance;" and all prosecutions in such court shall be conducted by the city attorney of such city, town or village, or by his deputy; but the county attorney of the county in which said city, town or village is situated may, if he so desires, also represent the state of Texas in such prosecutions, but, in all such cases, the said county attorney shall not be entitled to receive any fees or other compensation whatever for said services, and in no case shall the said county attorney have the power to dismiss any prosecution pending in said court, unless for reasons

filed and approved by the recorder of said court. (Id. sec. 8.)

Art. 968d. Council to prescribe rules for collecting fees and costs, practice, etc.; rules in meantime.—The council or board of aldermen of each such city, town or village shall, from time to time, by ordinance, prescribe such rules, not inconsistent with the provisions of this chapter nor other laws of this state, as in the discretion of the council or board of aldermen may be proper to enforce, by execution against the property of the defendant, or imprisonment of the defendant, the collection of all costs and fines imposed by such court as herein created and established, and shall also have power to adopt such rules and regulations concerning the practice and procedure in such court as said council or board of aldermen may deem proper, not inconsistent with the provisions of this chapter nor other law of this state; and, until the passage of such ordinance, all rules and regulations of such city, town or village now in force concerning the municipal courts therein, and the enforcement of collection of fines and costs imposed by such court, shall be applicable to the court hereby created and established. (Id. sec. 9.)

Art. 968e. Fines and costs paid into city treasury, etc.—All costs and fines imposed by the said court in any city, town or village, in any prosecution therein, shall be paid into the city treasury of said city, town or village, for the use and benefit of the city, town or village. (Id. sec. 10.)

Art. 968f. Jury and witness fees, and enforcing attendance of witnesses according to Code of Criminal Procedure.—The provisions of the Code of Criminal Procedure now in force regulating the amount and collection of jury and witness fees, and for enforcing the attendance of witnesses in criminal cases tried before a justice of the peace, shall, so far as applicable, govern and be applicable to the trial of cases before the corporation court herein created and established. (Id. sec. 12.)

Art. 968g. Judge may punish for contempt as county judge; may take recognizances, admit to bail, etc., under rules in county court.—The judge of said corporation court shall have the power to punish for contempt to the same extent and under the same circumstances as the county judge may punish for contempt of the county court. He shall have power to take recognizances, admit to bail, and forfeit recognizances and bail bonds under such rules and regulations as now govern the taking and forfeiture of the same in the county court. (Id. sec. 13.)

Art. 968h. Process, how served; defendant entitled to notice of complaint, if demanded.—All process issuing out of said corporation court shall be served by the chief of police or any policeman or marshal of the city, town or village within which it is situated, under the same rules and regulations as are now provided by law for the service by sheriffs and constables of process issuing out of the county court, so far as the same are applicable. But each defendant shall be entitled to at least one day's notice of any complaint against him, if such time be demanded. (Id. sec. 14.)

Art. 968i. (552) (481) Proceedings when a peace bond, etc., given before mayor, etc., has been forfeited.—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. (Acts 1875, p. 256, sec. 133; R. S. 1879, 481.)

Art. 968j. Fees of recorder, etc., how prescribed; paid out of city treasury; fines and costs collected and disposed of, how; committals; city liable to officers of appellate court, when; court to be always open.—Unless provided by special charter, the council or board of aldermen of each city, town or village shall, by ordinance, prescribe the compensation and fees which shall be paid to the recorder, city attorney, city secretary and other officers of said court, which compensation and fees shall be paid out of the treasury of the said city, town or village. In all such cases, the fines imposed on appeal, together with the costs imposed in the corporation court, and the court to which the appeal is taken, shall be collected of the defendant and his bondsmen, and such fine and the costs of the corporation court shall, when collected, be paid into the treasury of the city, town or village. When the defendant in such cases is committed to custody, he shall be committed to the custody of the chief of police or city marshal of such city, town or village, to be held by him in accordance with the ordinance of such city, town or village, providing for the custody of prisoners convicted before such corporation court; and said city, town or village shall be liable to the officers of the court to which the appeal is taken for the costs due them when such defendant has fully discharged such fine and costs. Such corporation court shall hold no terms, and shall be at all times open for the transaction of business. (Acts 1899, p. 43, sec. 15.)

Art. 969. (934) Justices, etc., shall keep a criminal docket, which shall show, etc.—Each justice of the peace, mayor and recorder shall keep a docket in which he shall enter the proceedings in all examinations and trials for criminal offenses had before him, which docket shall show—

1. The style of the action.
2. The nature of the offense charged.
3. The date of the issuance of the warrant and the return made thereon.
4. The time when the examination or trial was had, and, if the same was a trial, whether it was by a jury, or by himself.
5. The verdict of the jury, if any.
6. The judgment of the court.
7. Motion for new trial, if any, and the action of the court thereon.
8. Notice of appeal, if any.
9. The time when, and the manner in which the judgment was enforced. (O. C. 817; Acts 1876, p. 156, sec. 5.)

See Ex parte Knox, 39 S. W. 670; Peacock v. S., 35 S. W. 964.

Art. 970. (935) (900) Justices, etc., shall file transcript of docket with clerk of district court, etc.—At each term of the

district court, each justice of the peace, mayor and recorder in each county shall, on the first day of the term of said court for their county, file with the clerk of said court a certified transcript of the docket kept by such justice, mayor or recorder, as required by the preceding article, of all criminal cases examined or tried before him since the last term of such district court; and the clerk of such court shall immediately deliver such transcript to the foreman of the grand jury.

CHAPTER TWO

OF THE ARREST OF THE DEFENDANT

Art. 971. (936) Warrant may issue without complaint, when.—Whenever a criminal offense which a justice of the peace has jurisdiction to try shall be committed within the view of such justice, he may issue his warrant for the arrest of the offender. (O. C. 819.)

See Harris Co. v. Stewart, 41 S. W. 650.

Art. 972. (937) When complaint is made, shall be reduced to writing, etc.—Upon complaint being made before any justice of the peace, or any other officer authorized by law to administer oaths, that an offense has been committed in the county which a justice of the peace has jurisdiction finally to try, the justice or other officer shall reduce the same to writing, and cause the same to be signed and sworn to by the complainant; and it shall be duly attested by such justice or other officer before whom it was made; and when made before such justice, or when returned to him made before any other officer, the same shall be filed by him. (Acts 1876, p. 165, sec. 29.)

Art. 973. (938) What the complaint must state.—Such complaint shall state—

1. The name of the accused, if known, and, if unknown, shall describe him as accurately as practicable.

2. The offense with which he is charged shall be stated in plain and intelligible words.

3. It must appear that the offense was committed in the county in which the complaint is made.

4. It must show, from the date of the offense stated therein, that the offense is not barred by limitation. (Id.)

Lamb v. S., 93 S. W. 734.

Art. 974. (939) Warrants shall issue, when.—Whenever the requirements of the preceding article have been complied with, the justice of the peace shall issue a warrant for the arrest of the accused and deliver the same to the proper officer to be executed. (Id.; O. C. 821.)

Art. 975. (940) Requisites of warrant of arrest.—Said warrant shall be deemed sufficient if it contain the following requisites:

1. It shall issue in the name of "The State of Texas."

2. It shall be directed to the proper sheriff, constable, or marshal, or some other person specially named therein.

3. It shall command that the body of the accused be taken, and brought before the authority issuing the warrant, at a time and place therein named.

4. It must state the name of the person whose arrest is ordered, if it be known; and, if not known, he must be described as in the complaint.

5. It must state that the person is accused of some offense against the laws of the state, naming the offense.

6. It must be signed by the justice, and his office named in the body of the warrant, or in connection with his signature. (Id.; O. C. 821.)

See Mays v. S., 101 S. W. 233; Sullivan v. S., 148 S. W. 1091.

Art. 976. (941) Justices may summon witnesses to disclose crime.—When a justice of the peace has good cause to believe that an offense has been, or is about to be, committed against the laws of this state, he may summon and examine any witness or witnesses in relation thereto; and, if it shall appear from the statement of any witness or witnesses that an offense has been committed, the justice shall reduce said statements to writing, and cause the same to be sworn to by the witness or witnesses making the same; and, thereupon such justice shall issue a warrant for the arrest of the offender, the same as if complaint had been made out, and filed against each offender. (Id. sec. 31.)

See Jenkins v. S., 75 S. W. 312; Morawietz v. S., 80 S. W. 997; Morris v. S., 83 S. W. 1126; Williams v. S., 96 S. W. 47; Brown v. S., 118 S. W. 139; Goode v. S., 123 S. W. 597.

Art. 977. (942) Witnesses may be fined, etc., for refusing to make statements, etc.—Witnesses summoned under the preceding article who shall refuse to appear and make a statement of facts, under oath, shall be guilty of a contempt of court, and may be fined not exceeding one hundred dollars, and may be attached and imprisoned until they make such statement. (Id. sec. 32.)

Goode v. S., 123 S. W. 597; Ex parte Adams, 174 S. W. 1044.

Art. 978. (943) How warrant is executed.—Any peace officer into whose hands a warrant may come shall execute the same by arresting the person accused, and bringing him forthwith before the proper magistrate, or by taking bail for his appearance before such magistrate, as the case may be. (O. C. 822.)

Art. 979. (944) Any person may be authorized to execute warrant.—A justice of the peace may, when he deems it necessary, authorize any person other than a peace officer to execute a warrant of arrest by naming such person specially in the warrant; and, in such case, such person shall have the same powers, and shall be subject to the same rules that are conferred upon and govern peace officers in like cases. (Acts 1876, p. 166, sec. 33.)

Art. 980. (945) Where an offense has been committed in another county, etc.—Whenever complaint is made before any justice of the peace that a felony has been committed in any other than a county in which the complaint is made, it shall be the duty of such justice to issue his warrant for the arrest of the accused, directed as in other cases, commanding that the accused be arrested and taken before the county judge, or any magistrate of the county where such felony is alleged to have been committed,

forthwith, for examination as in other cases. (Id. p. 167, sec. 39.)

CHAPTER THREE

OF THE TRIAL AND ITS INCIDENTS

Art. 981. (946) Justice shall try cause without delay.—When the defendant is brought before the justice, he shall proceed to try the cause without delay, unless good ground be shown for a postponement thereof, in which case, he may postpone the trial to any time not longer than five days, and may, if he deem proper, require the defendant to give bail for his appearance; and if, when required, he fails to give bail, he shall be kept in custody until the final determination of the cause. (O. C. 823.)

Art. 982. (947) (912) Defendant may waive trial by jury.—The defendant, in case of misdemeanor of which a justice of the peace has jurisdiction to finally try and determine, may waive a trial by jury; and, in such case, the justice shall proceed to hear and determine the case without a jury.

Art. 983. (948) Jury shall be summoned, if defendant does not waive same.—If the defendant does not waive a trial by jury, the justice shall issue a writ commanding the proper officer to summon forthwith a jury of six men, qualified to serve as jurors in the county; and said jurors, when so summoned, shall remain in attendance as jurors in all cases that may come up for hearing until discharged by the court. (O. C. 826; Acts 1876, p. 167, sec. 3.)

Art. 984. (949) Juror may be fined, etc.—Any person summoned as juror who fails to attend may be fined by the justice as for contempt not exceeding twenty dollars. (O. C. 826.)

Art. 985. (950) Complaint, etc., shall be read to defendant.—If the warrant has been issued upon a complaint made to the justice, the complaint and warrant shall be read to the defendant. If issued by the justice without previous complaint, he shall state to the defendant the accusation against him. (O. C. 824.)

Art. 986. (951) Defendant shall not be discharged by reason of informality.—A defendant shall not be discharged by reason of any informality in the complaint or warrant; and the proceeding before the justice shall be conducted without reference to technical rules. (O. C. 825.)

Art. 987. (952) Challenge of jurors.—In all trials by a jury, before a justice of the peace, the state and each of the defendants in the case shall be entitled to three peremptory challenges, and also to any number of challenges for cause, which cause shall be judged of by the justice. (Acts 1876, p. 160, sec. 12.)

Art. 988. (953) Other jurors shall be summoned, when.—If, from challenges or any other cause, a sufficient number of jurors are not in attendance, the justice shall order the proper officer to summon a sufficient number of qualified persons to form the jury. (Id.)

Art. 989. (954) Oath to be administered to jury.—The following oath or affirmation shall be administered by the justice of the peace to the jury in each case: 'You, and each of you, do solemnly swear (or affirm, as the case may be) that you will well and truly try the cause about to be submitted to you, and a true verdict render therein, according to the law and the evidence, so help you God." (O. C. 834; Acts 1876, p. 160, sec. 13.)

Art. 990. (955) Defendant shall plead, etc.—After impaneling the jury, the defendant shall be required to plead; and he may plead "guilty" or "not guilty," or the special plea named in the succeeding article. (O. C. 829.)

See Ex parte Jones, 80 S. W. 995.

Art. 991. (956) The only special plea.—The only special plea allowed is that of former acquittal or conviction for the same offense. (O. C. 830.)

Art. 992. (957) Pleadings are oral.—All pleading in the justices' courts, in criminal actions, is oral; but the justice shall note upon his docket the nature of the plea offered. (O. C. 831.)

Art. 993. (958) Proceedings upon plea of guilty.—If the defendant plead "guilty," proof shall be heard as to the offense; and the punishment shall be assessed by the jury, or by the justice, when a jury has been waived by the defendant. (O. C. 832.)

Art. 994. (959) When defendant refuses to plead, etc.—If the defendant refuses to plead, the justice shall enter the plea of "not guilty," and the cause proceed accordingly. (O. C. 833.)

Art. 995. (960) Witnesses examined by whom.—If the state be represented by counsel, he may examine the witness, and argue the cause; if the state is not represented, the witnesses shall be examined by the justice. (O. C. 835.)

Art. 996. (961) Defendant may appear by counsel; argument of counsel.—The defendant has a right to appear by counsel, as in all other cases; but not more than one attorney shall conduct either the prosecution or defense; and the counsel for the state may open and conclude the argument. (O. C. 836.)

Art. 997. (962) Rules of evidence.—The rules of evidence which govern the trials of criminal actions in the district and county court shall apply also to such actions in justices' courts. (O. C. 837.)

Art. 998. (963) Jury shall be kept together till they agree.—When the cause is submitted to the jury, they shall retire in charge of some officer, and be kept together until they agree to a verdict, or are discharged. (O. C. 838.)

Art. 999. (964) If the jury fail to agree, shall be discharged.—If a jury fail to agree upon a verdict after being kept together a reasonable time, they shall be discharged; and, if there be time left on the same day, another jury shall be impaneled to try the cause; or the justice may adjourn for not more than two days, and again impanel a jury for the trial of such cause. (O. C. 839.)

Art. 1000. (965) When court adjourns, the defendant shall enter into bail.—In case of an adjournment, the justice shall require the defendant to enter into bail for his appearance; and, upon the failure to give bail, the defendant may be held in custody. (O. C. 840.)

Art. 1001. (966) When the jury have agreed upon a verdict.—When the jury have agreed upon a verdict, they shall bring

the same into court; and the justice shall see that it is in proper form. (O. C. 842.)

Art. 1002. (967) Justice shall enter verdict.—The justice shall enter the verdict upon his docket, and render the proper judgment thereon. (O. C. 843.)

Art. 1003. (968) Defendant may be placed in jail, when.—Whenever, by the provisions of this title, the peace officer is authorized to retain a defendant in custody, he may place him in jail or any other place where he can be safely kept. (O. C. 844.)

Art. 1004. (969) New trial may be granted defendant.—A justice may, for good cause shown, grant the defendant a new trial, whenever such justice shall consider that justice has not been done the defendant in the trial of such case. (Acts 1876, p. 176, sec. 17.)

Art. 1005. (970) (935) Application must be made in one day.—An application for a new trial must be made within one day after the rendition of judgment, and not afterward; and the execution of the judgment shall not be stayed until a new trial has been granted.

Art. 1006. (971) (936) When new trial is granted, another trial without delay.—When a new trial has been granted, the justice shall proceed, as soon as practicable, to try the case again.

Art. 1007. (972) (937) Only one new trial shall be granted.—Not more than one new trial shall be granted the defendant in the same case.

Art. 1008. (973) (938) State not entitled to new trial.—The state shall, in no case, be entitled to a new trial.

Art. 1009. (974) [Superseded by Acts 1899, p. 233, art. 922, ante.]

Art. 1010. (975) Effect of appeal.—When a defendant gives notice of an appeal and files the appeal bond required by law with the justice, all further proceeding in the case in the justice's court shall cease.

The provision of the above article as to notice of appeal is superseded by Acts 1899, p. 233 (art. 922, ante).

Art. 1011. (976) Judgments, etc., shall be in open court.—All judgments and final orders of a justice of the peace in a criminal action shall be rendered in open court, and entered upon his docket. (Acts 1876, p. 162, sec. 17.)

CHAPTER FOUR

THE JUDGMENT AND EXECUTION

Art. 1012. (977) The judgment.—The judgment, in case of conviction in a criminal action before a justice of the peace, shall be that the state of Texas recover of the defendant the fine assessed and costs, and that the defendant remain in custody of the sheriff until the fine and costs are paid; and, further, that execution issue to collect the same. (O. C. 845.)

Funderburk v. S., 64 S. W. 1059.

Art. 1013. (978) (943) Capias for defendant, when.—If the defendant be not in custody when judgment is rendered, or, if he escapes from custody thereafter, a capias shall issue for his arrest and confinement in jail, until the fine and costs are paid, or he is legally discharged.

Art. 1014. (979) Execution shall issue.—In every case of conviction before a justice, and from which conviction no appeal is taken, there shall be issued an execution for the collection of the fine and costs, which shall be enforced and returned in the manner prescribed by law in civil actions before justices. (O. C. 849.)

Art. 1015. (980) Defendant may be discharged from jail, how.—If a defendant be placed in jail on account of failure to pay the fine and costs, he can be discharged on habeas corpus by showing—

1. That he is too poor to pay the fine and costs.

2. That he has not been afforded an opportunity by the commissioners' court of the county of discharging the fine and costs adjudged against him, as provided in the law relating to county convicts; and, further,

3. That he has remained in jail a sufficient length of time to satisfy the fine and costs, at the rate of three dollars for each day.

But the defendant shall, in no case under this article, be discharged until he has been imprisoned at least ten days; and a justice of the peace may discharge the defendant upon his showing the same cause, by written application presented to such justice; and, upon such application being granted, the justice shall note the same on his docket. (Revision, 1879.)

See Ex parte Rodriguez, 73 S. W. 1050.

Art. 1016. (981) Peace officer bound to execute process.—Every peace officer is bound to execute all process directed to him from a justice of the peace. (O. C. 850.)

TITLE 12

MISCELLANEOUS PROCEEDINGS

CHAPTER ONE

OF INQUIRIES AS TO THE INSANITY OF THE DEFENDANT AFTER CONVICTION

Art. 1017. (982) Insanity after conviction.—If it be made known to the court at any time after conviction, or if the court has good reason to believe that a defendant is insane, a jury shall be impaneled to try the issue. (O. C. 781.)

Springer v. S., 140 S. W. 99.

Art. 1018. (983) Information as to insanity of defendant.—Information to the court as to the insanity of a defendant may be given by the written affidavit of any respectable person, setting forth that there is good reason to believe that the defendant has become insane. (O. C. 782.)

Springer v. S., 140 S. W. 99.

Art. 1019. (894) Court shall impanel jury.—For the purpose of trying the question of insanity, the court shall impanel a jury as in the case of a criminal action. (O. C. 783.)

Art. 1020. (985) Defendant's counsel may open, etc.—The counsel for the defendant has the right to open and conclude the argument upon the trial of an issue as to insanity. (O. C. 786.)

Art. 1021. (986) Court shall appoint counsel, when.—If the defendant has no counsel, the court shall appoint counsel to conduct the trial for him. (O. C. 787.)

Art. 1022. (987) No special formality required on trial.—No special formality is necessary in conducting the proceedings au-

thorized by this chapter. The court shall see that the inquiry is conducted in such a manner as to lead to a satisfactory conclusion. (O. C. 784.)

Art. 1023. (988) When defendant is found insane.—When, upon the trial of an issue of insanity, the defendant is found to be insane, all further proceedings in the case against him shall be suspended until he becomes sane. (O. C. 788, 789.)

Wilson v. S., 149 S. W. 117.

Art. 1024. (989) Court shall commit insane defendant, etc.—When a defendant is found to be insane, the court shall make an order, and have the same entered upon the minutes, committing the defendant to the custody of the sheriff, to be kept subject to the further order of the county judge of the county. (O. C. 793.)

Wilson v. S., 149 S. W. 117.

Art. 1025. (990) (955) Shall be confined in lunatic asylum until, etc.—When a defendant has been committed, as provided in the preceding article, the proceedings shall forthwith be certified to the county judge, who shall take the necessary steps, at once, to have the defendant confined in the lunatic asylum, as provided in the case of other lunatics, until he becomes sane.

Wilson v. S., 149 S. W. 117.

Art. 1026. (991) When the defendant becomes sane.—Should the defendant become sane, he shall be brought before the court in which he was convicted; and a jury shall again be impaneled to try the issue of his sanity; and, should he be found to be sane, the conviction shall be enforced against him in the same manner as if the proceedings had never been suspended. (Id.)

Art. 1027. (992) Affidavit of the sanity of the defendant.—The fact that the defendant has become sane may be made known to the court in which the conviction was had by the official certificate, in writing, of the superintendent of the lunatic asylum, where he is confined, or, if not confined in a lunatic asylum, by the affidavit, in writing, of any credible person. (Id.)

Art. 1028. (993) Proceedings upon affidavit.—When a certificate, or affidavit, such as is provided for in the preceding article, is presented to the judge or court, either in vacation or in term time, such judge or court shall issue a writ, directed to the officer having the custody of such defendant, commanding such officer to bring the defendant before the court immediately, if the court be then in session; and, if the court be not then in session, to bring the defendant before the court at its next regular term for the county in which the conviction was had; which writ shall be served and returned as in the case of the writ of habeas corpus, and under like penalties for disobedience. (Id.)

Art. 1029. (994) When defendant is again insane.—Should the defendant again be found to be insane, he shall be remanded to the custody of the superintendent of the lunatic asylum, or other proper office. (Id.)

Art. 1030. (995) Conviction shall be enforced, when.—When, upon the trial of an issue of insanity, it is found that the defendant is sane, the judgment of conviction shall be enforced as if no such inquiry had been made. (O. C. 791.)

CHAPTER TWO

DISPOSITION OF STOLEN PROPERTY

Art. 1031. (996) Subject to order of proper court.—When any property alleged to have been stolen comes into the custody of an officer, he must hold it subject to the order of the proper court or magistrate. (O. C. 794.)

Art. 1032. (997) Restored on trial for theft to proper owner.—Upon the trial of any criminal action for theft, or for any other illegal acquisition of property, which is, by law, a penal offense, the court before whom the trial takes place shall order the property to be restored to the person appearing by the proof to be the owner of the same. (O. C. 795.)

Art. 1033. (998) Schedule of, to be filed by officer.—When an officer seizes property alleged to have been stolen, it is his duty to immediately file a schedule of the same, and its value, with the magistrate or court having jurisdiction of the case, certifying that the property has been seized by him, and the reason therefor. (O. C. 796.)

Art. 1034. (999) May be restored to owner, etc., when.—Upon examination of a criminal accusation before a magistrate, if it is proved to the satisfaction of such magistrate that any person is the true owner of property alleged to have been stolen, and which is in possession of a peace officer, he may, by written order, direct the property to be restored to such owner. (O. C. 797.)

Art. 1035. (1000) When delivered, bond may be required.—If the magistrate has any doubt as to the ownership of the property, he may require of the person claiming to be the owner a bond, with security, for the redelivery of the same, in case the property should thereafter be shown not to belong to such claimant; or he may, in his discretion, direct the property to be retained by the sheriff, until further orders respecting the possession thereof. (O. C. 798.)

Art. 1036. (1001) (966) Requisites of the bond, etc.—The bond provided for in the preceding article shall be made payable to the county judge of the county in which the property is in custody, and shall be in a sum equal to the value of the property, with good and sufficient security, to be approved by such county judge. Such bond shall be filed in the office of the clerk of the county court of such county, and, in case of a breach thereof, may be sued upon in such county before any court having jurisdiction of the amount thereof, by any claimant of the property, or by the county treasurer of such county.

Art. 1037. (1002) Property shall be sold, when and how.—If the property be not claimed within six months from the conviction of the person accused of illegally acquiring it, the same shall be, by the sheriff, sold for cash, after advertising for ten days as under execution; and the proceeds of such sale, after deducting therefrom all expenses of keeping such property and costs of sale, shall be paid into the treasury of the county where the defendant was convicted. (O. C. 800.)

Art. 1038. (1003) Money, how disposed of.—If the property stolen consists of

money, the same shall be paid into the county treasury if not claimed by the proper owner within six months. (O. C. 802.)

Art. 1039. (1004) Owner may recover proceeds of property sold, or money, etc.—The real owner of the property or money disposed of, as provided in the two preceding articles, shall have twelve months within which to present his claim to the commissioners' court of the county for the money paid to the county treasurer of such county; and, if his claim be denied by such court, he may sue the county treasurer in any court of such county having jurisdiction of the amount, and, upon sufficient proof, recover judgment therefor against such county. (O. C. 803.)

Art. 1040. (1005) When the property is a written instrument.—If the property be a written instrument, the same shall be deposited with the clerk of the county court of the county where the proceedings are had, subject to the claim of any person who may establish his right thereto. (O. C. 804.)

Art. 1041. (1006) Proceedings to recover written instrument.—The claimant of any such written instrument shall file his claim thereto in writing and under oath before the county judge; and, if such judge be satisfied that such claimant is the real owner of the written instrument, the same shall be delivered to him. The county judge may, in his discretion, require a bond of such claimant, as in other cases of property claimed under the provisions of this chapter, and may also require the written instrument to be recorded in the minutes of his court, before delivering it to the claimant. (O. C. 804.)

Art. 1042. (1007) Claimant shall pay charges on property.—The claimant of property, before he shall be entitled to have the same delivered to him, shall pay all reasonable charges for the safe keeping of the same while in the custody of the law; which charges shall be verified by the affidavit of the officer claiming the same, and determined by the magistrate of a court having jurisdiction thereof; and, in case said charges are not paid, the property shall be sold, as under execution; and the proceeds of sale, after the payment of such charges and costs of sale, paid to the owner of such property. (Revision, 1879.)

Art. 1043. (1008) Charges of officer where property is sold.—When property is sold, and the proceeds of sale are ready to be paid into the county treasury, the amount of expenses for keeping the same and the costs of sale shall be determined by the county judge; and the account thereof shall be in writing and verified by the officer claiming the same, with the approval of the county judge thereto for the amount allowed; and the same shall be filed in the office of the county treasurer at the time of paying into his hands the balance of the proceeds of such sale. (Id.)

Art. 1044. (1009) Provisions of this chapter apply to what cases.—All of the provisions of this chapter relating to stolen property apply as well to property acquired in any manner which makes the acquisition a penal offense. (O. C. 805.)

CHAPTER THREE

REPORTS OF OFFICERS CHARGED BY LAW WITH THE COLLECTION OF MONEY

Art. 1045. (1010) Reports of moneys collected shall be made, etc.—All officers charged by law with collecting money in the name, or for the use, of the state, shall report in writing under oath to the respective district courts of their several counties, on the first day of each term, the amounts of money that may have come to their hands since the last term of their respective courts aforesaid. (Acts 1874, p. 182, sec. 2.)

Art. 1046. (1011) What the report shall state.—The report required by the preceding article shall state—

1. The amount collected.
2. When and from whom collected.
3. By virtue of what process collected.
4. The disposition that has been made of the money.
5. If no money has been collected, the report shall state that fact. (Id.)

Art. 1047. (1012) Report of moneys collected for county.—A report, such as is required by the two preceding articles, shall also be made of all money collected for the county, which report shall be made to each regular term of the commissioners' court for each county. (Id. sec. 3.)

Art. 1048. (1013) What officers shall make report.—The following officers are the officers charged by law with the collection of money, within the meaning of the three preceding articles, and who are required to make reports therein mentioned, viz.: District and county attorneys, clerks of the district and county courts, sheriffs, constables, justices of the peace, mayors, recorders and marshals of incorporated cities and towns. (Id. sec. 1.)

Art. 1049. (1014) Report to embrace all moneys except taxes.—The moneys required to be reported embrace all moneys collected for the state or county other than taxes, but taxes are not included. (Id. sec. 2.)

Art. 1050. (1015) Money collected shall be paid to county treasurer.—Money collected by an officer upon recognizances, bail bonds and other obligations recovered upon in the name of the state, under the provisions of this Code, and all fines, forfeitures, judgments and jury fees, collected under any of the provisions of this Code, shall be forthwith paid over by the officers collecting the same to the county treasurer of the proper county, after first deducting therefrom the legal fees and commissions for collecting the same. (O. C. 806.)

CHAPTER FOUR

OF REMITTING FINES AND FORFEITURES, AND OF REPRIEVES, COMMUTATIONS OF PUNISHMENT, SUSPENDED SENTENCES, PARDONS AND PAROLES

Art. 1051. (1016) Governor may remit fines, etc.—In all criminal actions, except treason and impeachment, the governor shall have power, after conviction, to remit fines, grant reprieves, commutations of pun-

ishment and pardons. (O. C. 809; Const. art. 4, sec. 11.)

See Ex parte Mann, 46 S. W. 828.

Art. 1052. (1017) May remit forfeitures.—The governor shall have power to remit forfeitures of recognizances and bail bonds. (Id.)

Art. 1053. (1018) Shall file reasons for his action.—In all cases in which the governor remits fines or forfeitures, or grants reprieves, commutation of punishment or pardons, he shall file in the office of the secretary of state his reasons therefor. (Id.)

Art. 1054. (1019) May pardon treason, when.—With the advice and consent of the senate, the governor may grant pardons in cases of treason; and, to this end, he may respite a sentence therefor until the close of the succeeding session of the legislature. (Const. art. 4, sec. 11; Revision, 1879.)

Art. 1055. (1020) May commute penalty of death, etc.—The governor shall have the authority to commute the punishment in every case of capital felony, except treason, by changing the penalty of death into that of imprisonment for life, or for a term of years, either with or without hard labor, which may be done by his warrant to the proper officer, commanding him not to execute the penalty of death, and directing him to convey the prisoner to the penitentiary, stating therein the time for which, and the manner in which, the prisoner is to be confined; which warrant shall be sufficient authority to the sheriff to deliver, and to the proper officers of the penitentiary to receive and imprison such prisoner. (O. C. 811.)

Art. 1056. (1021) May delay execution of death penalty.—The governor may also reprieve and delay the execution of the penalty of death to any day fixed by him in the warrant to the sheriff, and such warrant shall be executed and returned to the proper court by the sheriff in the same manner as if it had been issued from such court. (O. C. 812.)

Art. 1057. (1022) Governor's acts shall be under great seal of the state, etc.—All remissions of fines and forfeitures, and all reprieves, commutations of punishment and pardons, shall be signed by the governor, and certified by the secretary of state, under the great seal of state, and shall be forthwith obeyed by any officer to whom the same may be presented. (Revision, 1879.)

Art. 1057a. Convicts paroled, when.—Meritorious prisoners who are now or may hereafter be in prison under a sentence to penal servitude may be allowed to go upon parole, outside of the building and jurisdiction of the penitentiary authorities subject to the provisions of this act, and to such regulations and conditions as may be made by the board of prison commissioners, with the approval of the governor of this state, and such parole shall be made only by the governor, or with his approval. (Article 6089, Rev. St. 1911; Acts 1911, p. 64, sec. 1; Acts 1913, S. S., p. 4, sec. 2, amending Acts 1913, p. 262, sec. 2.)

This article amends Acts 1913, p. 262, sec. 2, which superseded art. 6089, Rev. St. 1911, and, it would seem, Acts 1911, p. 64, sec. 1, which reads as follows: "The board of prison commissioners shall have power to make, establish and amend rules and regulations, subject to the approval of the governor, under which meritorious prisoners, who are now or hereafter may be imprisoned under a sentence to penal servitude, and who may have served the minimum term fixed by statute, for commission of offenses of which they were convicted, may be allowed to go upon parole outside the buildings and jurisdiction of the penitentiary authorities, subject to the exceptions hereinafter contained."

Art. 1057b. Paroled prisoners to remain under control of board of prison commissioners; retaking; warrants.—While on such parole such prisoners shall remain under the control of the board of prison commissioners and subject at any time to be taken back within the physical possession and control of the said board of prison commissioners as under the original sentence, but such retaking shall be at the direction of the governor, and all orders and warrants issued by said board of prison commissioners under such authority for the retaking of such prisoners shall be sufficient warrants for all officers named therein to return to actual custody and parole convicts, and it is hereby made the duty of all officers to execute such orders as ordinary criminal processes. (Article 6090, Rev. St. 1911; Acts 1911, p. 64, sec. 2; Acts 1913, S. S., p. 4, sec. 3, amending Acts 1913, p. 262.)

Art. 1057c. Meetings of commissioners; prisoner may apply for parole or discharge, when.—The board of prison commissioners shall meet at each of the prisons of this state from time to time, as they shall deem necessary. At each meeting of said board held at any prison in this state, every prisoner confined in said prison whose minimum sentence has expired shall be given an opportunity to appear before said board and apply for his release upon parole or for an absolute discharge as hereinafter provided, and said board is hereby prohibited from entertaining any other form of application or petition for the release upon parole or absolute discharge of any prisoner; provided, that any prisoner now serving or who may hereafter be sentenced to serve a term of imprisonment in the state penitentiary shall be paroled, if the prisoner so desires, three months before the expiration of his term of service, after deducting from his sentence all commutations for good behavior, and such parole shall extend until such prisoner shall violate the parole rules or the expiration of such prisoner's original term of imprisonment, unless terminated by the restoration of citizenship by the governor. (Acts 1911, p. 64, sec. 3.)

Art. 1057d. Record of prisoner; transfer to other place of confinement; copy.—The wardens or sergeants or guards of such prisoners, or who have in custody convicts subject to parole under this act, shall cause to be kept at such prison or place of confinement at which such convicts are confined an accurate record of each prisoner therein confined upon sentence, as aforesaid, which record shall include a biographical sketch covering such items as may indicate the cause of the criminal character or conduct of the prisoner, and also a record of the demeanor, education and labor of the prisoner while confined thereat, and whenever such prisoner is transferred from one prison or place of confinement to another, a copy of such record or an abstract of the substance thereof, together with certified copy of the sentence of such prisoner shall be transmitted with such prisoner to the prison or place of confinement to which he shall be trans-

ferred and delivered to the prison officer in charge thereof and retained by him as a part of the record of such prisoner. (Acts 1911, p. 64, sec. 4; Acts 1913, S. S., p. 4, sec. 4, amending Acts 1913, p. 262.)

This article and articles 1057e and 1057f would seem to supersede art. 6091, Rev. Civ. St. 1911, which was substantially re-enacted by Acts 1913, p. 262, sec. 3. Section 3 in Acts 1913, p. 262, reads as follows: "No convict confined in the Texas penitentiaries shall be considered eligible for parole, and no application for parole shall be considered by the prison commissioners until such prisoner is recommended as worthy of such consideration by a chaplain of the penitentiaries, and, before consideration by the prison commissioners, notice of such recommendation shall be published in a newspaper in the county from which such prisoner was sentenced, and, if none be there published, then in the county whose county site is nearest thereto, provided the expense of such publication shall not exceed one dollar; and in no case shall any prisoner be paroled, unless there is in the judgment of the prison commissioners reasonable ground to believe that he will, if released, live and remain at liberty, without violating the law, and that his release is not incompatible with the welfare of society; and such judgment shall be based upon the record and character of the prisoner established in prison, and his general reputation for honesty and peace prior to conviction. And no petition or other form of application for the release of any prisoner shall be entertained by the said commission, and no attorney or outside persons of any kind shall be allowed to appear before the prison commissioners as applicants for the parole of a prisoner. But these requirements shall not prevent the said prison commissioners from making such inquiries as they may deem desirable in regard to the previous history or environment of such prisoner, and in regard to his probable surroundings if paroled; but such inquiries shall be instituted by the prison commissioners, superintendent, and assistant superintendent, board of pardons, and all such information thus received shall be considered and treated as confidential."

Art. 1057e. Report by wardens as to prisoners entitled to parole.—It shall be the duty of the wardens of such prisoners to make or cause to be made to the board of prison commissioners a written report based upon the record of such prisoner as to whether or not such prisoner shall be paroled or pardoned, and such report shall be made with reference to each prisoner in charge of such warden, and shall give the reasons for such recommendations as are made, and if no recommendations are made the report shall so state, such reports to be made semi-annually. (Acts 1911, p. 64; Acts 1913, S. S., p. 4, sec. 5, amending Acts 1913, p. 262.)

Art. 1057f. Action of prison commissioners on reports of wardens.—It shall be the duty of the board of prison commissioners to receive and preserve said reports and recommendations provided for in this act, and to consider the same and to approve or disapprove the same within three months after the same are received and to transmit a report of such recommendations for parole or pardon as they approve to the governor of this state without delay. (Acts 1911, p. 64; Acts 1913, S. S., p. 4, sec. 6, amending Acts 1913, p. 262.)

Art. 1057g. Commissioners may authorize release on parole, when.—If it shall appear to said board of prison commissioners, from a report by the warden or sergeant of such prison, or upon an application by a convict for release on parole as hereinbefore provided, that there is reasonable probability that such applicant will live and remain at liberty without violating the law, then said board of prison commissioners may authorize the release of such applicant upon parole, and such applicant shall thereupon be allowed to go upon parole outside of said prison walls and enclosure, upon the terms and conditions as said board shall prescribe, but to remain while so on parole in the legal custody and under the control of the said board of prison commissioners until the expiration of the maximum term specified in his sentence as hereinbefore provided, or until his absolute discharge as hereinafter provided. (Acts 1911, p. 64, sec. 5.)

Art. 1057h. Warrant for retaking of prisoner.—If such board of prison commissioners, or any two members thereof, shall have reasonable cause to believe that a prisoner so on parole has violated his parol and has lapsed or is probably about to lapse into criminal ways or company, then such board, or any two members thereof, may issue their warrant for the retaking of such prisoner, at any time prior to the maximum period for which such prisoner might have been confined within the prison walls upon his sentence, which time shall be specified in such warrant. (Id. sec. 6.)

Art. 1057i. Warrant, how executed; fees.—Any officer of said prison, or any officer authorized to serve criminal process within this state, to whom such warrant shall be delivered, is authorized and required to execute said warrant by taking said prisoner and returning him to said prison within the time specified in said warrant. Such officer, other than an officer of the prison, shall be entitled to receive the same fees therefor as upon the execution of a warrant of arrest at the place where said prisoner shall be retaken, and as for transporting a convict from the place of arrest to the prison, in case such officer also transports said prisoner to the prison. Such fees of the officer in executing said warrant shall be paid by the prison commissioners out of the funds of the prison. (Id. sec. 7.)

Art. 1057j. Board to be notified of warrant; prisoner declared delinquent, when; imprisonment.—At the next meeting of the board of prison commissioners held at such prison after the issuing of the warrant for the retaking of any paroled prisoner said board shall be notified thereof. If said prisoner shall have been returned to said prison he shall be given an opportunity to appear before said board and the said board may after such opportunity has been given, or in case said prisoner has not been returned, declare said prisoner to be delinquent, and he shall, whenever arrested by virtue of such warrant, be thereafter imprisoned in said prison for a period equal to the unexpired maximum term of sentence of such prisoner at the time of such delinquency is declared, unless sooner released on parole or absolutely discharged by the board of prison commissioners. (Id. sec. 8.)

A part of the subject-matter of this article was carried into section 4 of Acts 1913, p. 262, and on the amendment of that act by Acts 1913, S. S., p. 4, it was omitted. Section 4 of Acts 1913, p. 262, reads as follows: "Any prisoner violating the conditions of his parole, as prescribed by rules issued by said commissioners, when by a formal order entered in the proceedings of same, he is declared delinquent, shall thereafter be treated as an escaped prisoner, owing service to the state, and shall be liable when arrested to serve out the unexpired period, and the time from the date of his declared delinquency to the date of his arrest shall not be counted as any part or portion of time served. Any prisoner at

large on parole committing a fresh crime, and, upon conviction thereof, being sentenced anew to the penitentiary, shall be subject to serve a second sentence after the first sentence is served or annulled, to commence from the date of termination of his liability upon the first or former sentence." The effect of the omission from the amendatory act of the subject-matter in question may present a matter for judicial construction.

Art. 1057k. Absolute discharge, when.—If it shall appear to the said board of prison commissioners that there is a reasonable probability that any prisoner so on parole will live and remain at liberty without violating the law, and that his absolute discharge from imprisonment is not incompatible with the welfare of society, then said board of prison commissioners shall issue to such prisoner an absolute discharge from imprisonment upon such sentence and which shall be effective therefor. (Id. sec. 9.)

Art. 1057*l*. Power of pardon or commutation not impaired.—Nothing herein contained shall be construed to impair the power of the governor of this state to grant pardon or commutation in any case. (Id. sec. 10.)

Art. 1057m. Commissioners to appoint agent or inspector; duties.—Said board of prison commissioners shall appoint an agent or inspector whose duty it shall be to aid and secure proper employment for all prisoners who have so conducted themselves as to be entitled to get out from such prison on parole, and to keep the said board informed of the conduct of such prisoner when out on parole, and to make a report as to each prisoner in such matters on the first day of each month for the preceding month. (Id. sec. 11.)

Art. 1057n. Parole of prisoners serving under indeterminate sentence; continuance of supervision.—Whenever any prisoner serving an indeterminate sentence, as provided in section 1 of this Act [Art. 865a] shall have served for twelve months, on parole, in a manner acceptable to the board of prison commissioners, the said board shall certify such fact to the governor, with the recommendation that the said prisoner be pardoned and finally discharged from the sentence under which he is serving. But it shall be the duty of the prison commission to continue its supervision and care over such paroled prisoner until such time as the governor shall pardon and finally discharge from custody the said prisoner; provided, that in no case shall any prisoner be held for a longer term than the maximum provided by the sentence for the crime of which the said prisoner was convicted. (Acts 1913, S. S., p. 4, sec. 7, amending Acts 1913, p. 262, sec. 5.)

Art. 1057*o*. Restoration of citizenship.—When a convict who has been paroled shall have complied with the rules and conditions governing his parole until the end of the term to which he was sentenced, and without a revocation of his parole, he shall, upon a written or printed discharge from the superintendent and prison commissioners, setting forth these facts, be recommended by the board to the governor for restoration of his citizenship by the governor of the state of Texas. (Art. 6095, Rev. St. 1911; Acts 1911, p. 64, sec. 15; Acts 1913, S. S., p. 4, sec. 8, amending Acts 1913, p. 262, sec. 6.)

Art. 1057p. Application of Art. 6217 Rev. Civ. St. to prisoners not paroled under this act.—If a prisoner, sentenced to the penitentiary, shall not be paroled under the provisions of this Act, or if he shall only be sentenced to serve the minimum term of imprisonment fixed by law, then article 6217 of the Revised Civil Statutes of Texas shall apply to his sentence and he shall be entitled to such commutation or reduction of time as in said article provided under the conditions therein named. (Acts 1913, S. S., p. 4, sec. 9.)

Art. 1057q. Laws repealed.—No provision of this law shall in any manner be held to in anywise repeal, limit or affect in any manner the provisions of chapter seven (7) of the Acts of the thirty-third legislature [Arts. 865b–865i], providing for suspension of sentence in certain cases, and the provisions of said chapter 7 of the Acts of the thirty-third legislature shall apply to the trial of all cases under the conditions therein stipulated, and not specifically exempted from the operation thereof by the terms of said law. (Id. sec. 10.)

Art. 1057r. Governor shall appoint.—The Governor is hereby authorized to appoint two qualified voters of the State of Texas, and 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 "The Board of Pardon Advisers," and shall be paid out of any money in the Treasury, not otherwise appropriated, a salary of Three Thousand Dollars each per annum on monthly vouchers approved by the governor. (Acts 1897, p. 49; Acts 1893, p. 98; Acts 1905, p. 68; Acts 1917, 1st C. S., ch. 21, sec. 1; Acts 1919, 2d C. S., ch. 6, sec. 1.)

Art. 1057s. Shall keep record.—Said board shall be required to keep a record, in which will be entered every case sent it by the governor, giving the docket number of the convict, his name, when and where convicted, his sentence, his offense, when received from the governor, the action taken by said board, and the date of said action. (Acts 1905, p. 68, sec. 2; Acts 1897, p. 49; Acts 1893, p. 68.)

Art. 1057t. Shall examine applications for pardons, etc.—Said board shall be given a room in the capitol, properly furnished with necessary furniture, and file cases, and provided with such stationery, letter books and other appliances which may be necessary for the speedy and proper transaction and dispatch of the business for which it is organized. In addition to the thorough examination of each application which the governor may refer to said board, and reporting its recommendation thereon to him, it shall perform any other work in connection with said business the governor may direct; and said board shall spend such time each year as may be necessary in personally looking into the condition of such convicts as it may desire, or as may be designated by either the governor, the superintendent of penitentiaries, or either of his assistants, or by the prison physician, or either of the commissioners, giving special attention to the cases of those of long service, who may be thus designated, and who have no means or facilities for getting a proper petition before the governor, to the end that the board may have before it such data as will enable it to judge the condition of each. All cases shall

be taken up, considered and acted upon by said board in the regular order of reference by the governor, except when it appears to said board there is extraordinary emergency in any case. (Acts 1905, p. 68, sec. 3; Acts 1897, p. 49; Acts 1893, p. 98.)

TITLE 13

OF INQUESTS

CHAPTER ONE

INQUESTS UPON DEAD BODIES

Art. 1058. (1023) Held, by whom and in what cases.—Any justice of the peace shall be authorized, and it shall be his duty, to hold inquests within his county, in the following cases; provided, that all inquests shall be held by the justice of the peace without a jury:

1. When a person dies in prison.

2. When any person is killed, or from any cause dies an unnatural death, except under sentence of the law, or in the absence of one or more good witnesses.

3. When the body of any human being is found, and the circumstances of his death are unknown.

4. When the circumstances of the death of any person are such as to lead to suspicion that he came to his death by unlawful means. (O. C. 851; amended by Acts 1887, p. 31.)

Gray v. S., 114 S. W. 635, 22 L. R. A. (N. S.) 513.

Art. 1059. (1024) Body may be disinterred.—When a body upon which an inquest ought to have been held has been interred, the justice of the peace may cause it to be disinterred for the purpose of holding such inquest. (O. C. 852.)

Art. 1060. (1024a) Physician may be called in.—Whenever an inquest is held to ascertain the cause of death, the justice of the peace is hereby authorized, if he deems it necessary, to call in the county physician, or, if there be no county physician, or, if it be impracticable to secure his services, then some regular practicing physician, to make an autopsy in order to determine whether the death was occasioned by violence; and, if so, the nature and character of the violence used; and the county in which such inquest and autopsy is held shall pay to the physician making such autopsy a fee of not less than ten nor more than fifty dollars, the excess over ten dollars to be determined by the county commissioners' court after ascertaining the amount and nature of the work performed in making such autopsy. (Acts 1893, p. 155.)

See Polk Co. v. Phillips, 51 S. W. 328; Id. 535.

Art. 1061. (1024b) Chemical analysis provided for in certain cases.—If, upon such inquest, it becomes necessary to determine whether the death has been produced by poison, it is hereby made the duty of the justice of the peace, upon request of the physician performing such autopsy, to call in to his aid, if necessary, some medical expert or chemist qualified to make an analysis of the stomach and its contents, together with such other portions of the body as may be necessary to be analyzed and tested, for the purpose of determining the presence of poison in such body; and the county commissioners' court of the county shall pay to such medical expert or chemist, as a reasonable fee for his services, a sum of money not to exceed fifty dollars. (Id. sec. 2.)

Art. 1062. (1025) Upon what information justice may act.—The justice of the peace shall act in such cases upon verbal or written information given him by any credible person, or upon facts within his own knowledge. (O. C. 853.)

Art. 1063. (1026) Duty of sheriff, etc.—It is the duty of the sheriff, and of every keeper of any prison, to inform the justice of the peace of the death of any person confined therein. (O. C. 854.)

Art. 1064. (1027) Justice shall issue subpœnas.—The justice of the peace shall have power to issue subpœnas to enforce the attendance of witnesses upon an inquest; and, in case of disobedience or failure to attend, may issue attachments for such witnesses. (O. C. 860.)

Art. 1065. (1028) Testimony of witnesses to be reduced to writing, etc.—Witnesses shall be sworn and examined by the justice, and the testimony of each witness shall be reduced to writing by the justice, or under his direction, and subscribed by the witness. (O. C. 861.)

See Price v. S., 43 S. W. 96; Stanley v. S., 74 S. W. 318.

Art. 1066. (1029) Inquest may be held in private.—Should the justice deem proper, the inquest may be held in private; but in all cases where a person has been arrested, charged with having caused the death of the deceased, such person and his counsel shall have the right to be present at the inquest, and to examine witnesses and introduce evidence. (O. C. 862.)

Art. 1067. (1030) Proceedings shall not be interfered with.—If any other persons than the justice, and the accused and his counsel, and counsel for the state, are present at the inquest, they shall not interfere with the proceedings; and no question shall be asked a witness, except by the justice, the accused or his counsel, and the counsel for the state; and the justice of the peace may fine any person violating this article for contempt of court, not exceeding twenty dollars, and may cause such person to be placed in custody of a peace officer, and removed from the presence of the inquest. (O. C. 862; 1883, p. 12; 1887, p. 32.)

Art. 1068. (1031) Justice shall keep a minute book, wherein he shall set forth, etc.—The justice of the peace shall keep a book in which he shall make a minute of all the proceedings relating to every inquest held by him. Such minute shall set forth—

1. The nature of the information given the justice of the peace, and by whom given, unless he acts upon facts within his own knowledge.

2. The time and place, when and where, the inquest is held.

3. The name of the deceased, if known; or, if not known, as accurate a description of him as can be given.

4. The finding by the justice at the inquest.

5. If any arrest is made of a suspected person before inquest held, the name of the person and the fact of his arrest, as well as everything material which relates thereto, shall be noted. (O. C. 864; amended by Acts 1887, p. 32.)

Art. 1069. (1032) Where the killing was the act of any person.—When the justice has knowledge that the killing was the act of any person, or when an affidavit is made that there is reason to believe that such person has killed the deceased, a warrant may be issued for the arrest of the accused before inquest held; and the accused and his counsel shall have the right to be present when the same is held, and to examine the witnesses and introduce evidence before the jury. (Revision, 1879.)

Art. 1070. (1033) Peace officer shall execute warrant of arrest.—Any peace officer to whose hands the justice's warrant of arrest shall come is bound to execute the same without delay, and he shall detain the person arrested until his discharge is ordered by the justice or other proper authority. (Id.)

Art. 1071. (1034) Warrant shall be sufficient, if, etc.—A warrant of arrest in such cases shall be sufficient if it issues in the name of "The State of Texas," recites the name of the accused, or describes him, when his name is unknown, sets forth the offense charged in plain language, and is signed officially by the justice. (Id.)

Art. 1072. (1035) If the justice find that a person killed the deceased.—If it be found by the justice of the peace, upon evidence adduced at the inquest, that a person already arrested did in fact kill the deceased, or was an accomplice or accessory to the death, the justice may, according to the facts of the case, commit him to jail or require him to execute a bail bond with security for his appearance before the proper court to answer for the offense. (Id. as amended 1887, p. 32.)

Art. 1073. (1036) Bail bond shall be sufficient, if, etc.—A bail bond taken before a justice shall be sufficient if it recites the offense of which the party is accused, be payable to the state of Texas, be dated and signed by the principal and his surety; and such bond may be forfeited, and judgment recovered thereon, and the same collected as in the case of any other bail bond. (Revision, 1879.)

Art. 1074. (1037) Warrant of arrest, when.—When, by the evidence adduced before a justice of the peace holding an inquest, it is found that any person not in custody killed the deceased, or was an accomplice or accessory to the death, the justice shall forthwith issue his warrant of arrest to the sheriff or other peace officer, commanding him to arrest the person accused, and bring him before such justice, or before some other magistrate named in the writ. (O. C. 872; amended by Acts 1887, p. 32.)

Art. 1075. (1038) Requisites of warrant.—The warrant mentioned in the preceding article shall be sufficient if it run in the name of the state of Texas, give the name of the accused, or describe him, when his name is unknown, recite the offense with which he is charged in plain language, and be dated and signed officially by the justice. (O. C. 873.)

Art. 1076. (1039) Peace officer shall execute warrant.—The peace officer into whose hands such warrant may come shall forthwith execute the same by arresting the defendant and taking him before the magistrate named in the warrant; and the magistrate shall proceed to examine the accusation; and the same proceedings shall be had thereon as in other cases where persons accused of offenses are brought before him. (O. C. 874.)

Art. 1077. (1040) Accused may be arrested, etc., pending inquest.—Nothing contained in this title shall prevent proceedings from being had for the arrest and examination of an accused person before a magistrate, pending the holding of an inquest. But, when a person accused of an offense has been already arrested under a warrant from the justice, he shall not be taken from the hands of the peace officer by a warrant from any other magistrate. (O. C. 877.)

Art. 1078. (1041) Justice shall certify proceedings to district court.—When an inquest has been held, the justice before whom the same was held shall certify to the proceedings, and shall inclose in an envelope the testimony taken, the finding of the justice, the bail bonds, if any, and all other papers connected with the inquest, and shall seal up such envelope and deliver it, properly indorsed, to the clerk of the district court without delay, who shall safely keep the same in his office subject to the order of the court. (O. C. 870; amended by Acts 1887, p. 32.)

Art. 1079. (1042) Shall preserve all evidence.—It shall also be the duty of the justice to carefully preserve all evidence whatsoever that may come to his knowledge and possession which might, in his opinion, tend to show the real cause of the death, or the person, if any one, who caused such death, and shall deliver all such evidence to the clerk of the district court, who shall keep the same safely, subject to the order of the court. (Revision, 1879.)

Art. 1080. (1043) Witnesses may be required to give bail.—The justice may, should he deem it proper, require bail of witnesses examined before the inquest to appear and testify before the next grand jury, or before an examining or other proper court, as in other cases. (Id.)

CHAPTER TWO

FIRE INQUESTS

Art. 1081. (1044) Investigation shall be had upon complaint, etc.—Whenever complaint in writing, under oath, is made by any credible person before any justice of the peace that there is ground to believe that any building has been unlawfully set on fire, or attempted to be set on fire, such justice of the peace shall, without delay, cause the truth of such complaint to be investigated. (Act June 2, 1873, p. 171, sec. 1.)

This chapter may be superseded by Acts 1910, S. S., p. 125, ch. 8, secs. 6-9, as amended by Acts 1913, p. 195, secs. 8-11 (Civ. St. arts. 4881-4884), providing for investigations by the state fire marshal.

Art. 1082. (1045) Proceedings in such case.—The proceedngs in such case shall be governed by the same rules as are provided in the preceding chapter of this title concerning inquests upon dead bodies, and the officer conducting such investigation shall have the same powers as are conferred upon justices of the peace in the preceding chapter. (Id. sec. 2.)

Art. 1083. (1046) Verdict of jury.—The jury, after inspecting the place where

the fire was, or was attempted, and after hearing the testimony, shall deliver to the justice of the peace holding such inquest their verdict in writing, signed by them, in which they shall find and certify how and in what manner such fire happened, or was attempted, and all the circumstances attending the same, and who were guilty thereof, either as principal or accessory, and in what manner. But if such jury be unable to ascertain the origin and circumstances of such fire they shall find, and certify accordingly. (Id. sec. 3.)

Art. 1084. (1047) Witnesses shall be bound over, when.—If the jury find that any building has been unlawfully set on fire, or has been attempted so to be, the justice of the peace holding such inquest shall bind over the witnesses to appear and testify before the next grand jury of the county in which such offense was committed. (Id. sec. 4.)

Art. 1085. (1048) Warrant shall issue for person charged, when.—If the person charged with the offense, if there be any person so charged, be not in custody, the justice of the peace shall issue a warrant for his arrest; and, when arrested, such person shall be dealt with as in other like cases. (Id. sec. 4.)

Art. 1086. (1049) Testimony of witnesses shall be reduced to writing, etc.—In all investigations had under this chapter, the testimony of all witnesses examined before the jury shall be reduced to writing by the justice of the peace, or under his direction, and signed by the witnesses; and such testimony, together with the verdict of the jury and all bail bonds taken in the case, shall be certified to and returned by the justice of the peace to the next district or criminal court of his county. (Id. sec. 6.)

Art. 1087. (1050) Compensation of officers, etc.—The compensation of the officers and jury making the investigation provided for in this chapter shall be the same as that allowed for holding an inquest upon a dead body, so far as applicable, and shall be paid in the same manner. (Id. sec. 5.)

TITLE 14

OF FUGITIVES FROM JUSTICE

Art. 1088. (1051) Fugitive from justice delivered up, when.—A person charged in any other state or territory of the United States with treason, felony or other crime, who shall flee from justice and be found in this state, shall, on demand of the executive authority of the state or territory from which he fled, be delivered up, to be removed to the state or territory having jurisdiction of the crime. (O. C. 878.)

See Ex parte Denning, 100 S. W. 401; Ex parte Lipshitz, 127 S. W. 817; Ex parte Innes, 173 S. W. 291, L. R. A. 1916C, 1251; Ex parte Goodman, 182 S. W. 1120.

Art. 1089. (1052) Judicial and peace officers shall aid in the arrest of.—It is declared to be the duty of all judicial and peace officers of the state to give aid in the arrest and detention of a fugitive from any other state or territory, that he may be held subject to a requisition by the governor of the state or territory from which he may have escaped. (O. C. 879.)

Ex parte Lipshitz, 127 S. W. 817.

Art. 1090. (1053) Magistrate shall issue warrant for arrest of fugitive, when.—Whenever a complaint, on oath, is made to a magistrate that any person, within his jurisdiction, is a fugitive from justice from another state or territory, it is his duty to issue a warrant of arrest for the apprehension of the person accused. (O. C. 882.)

Ex parte Lipshitz, 127 S. W. 817.

Art. 1091. (1054) Complaint shall be sufficient, if it recites, etc.—The complaint shall be sufficient if it recites—

1. The name of the person accused.
2. The state or territory from which he has fled.
3. The offense committed by the accused.
4. That he has fled to this state from the state or territory where the offense was committed.
5. That the act alleged to have been committed by the accused is a violation of the penal law of the state or territory from which he fled. (O. C. 883.)

Ex parte Lipshitz, 127 S. W. 817; Ex parte Jones, 199 S. W. 1110.

Art. 1092. (1055) Warrant of arrest from magistrate.—The warrant of a magistrate to arrest a fugitive from justice shall direct a peace officer to apprehend the person accused, and bring him before such magistrate. (Revision, 1879.)

Ex parte Lipshitz, 127 S. W. 817.

Art. 1093. (1056) Shall require bail or commit accused, when.—When the person accused is brought before the magistrate, he shall hear proof, and, if satisfied that the defendant is charged in another state or territory with the offense named in the complaint, he shall require of him bail, with good and sufficient security, in such amount as such magistrate may deem reasonable, to appear before such magistrate at a specified time; and, in default of such bail, he may commit the defendant to jail, to await a requisition from the governor of the state or territory from which he fled. (O. C. 885.)

Ex parte Lipshitz, 127 S. W. 817.

Art. 1094. (1057) Certified transcript of indictment, evidence.—A properly certified transcript of an indictment against the accused shall be evidence to show that he is charged with the crime alleged. (O. C. 886.)

Art. 1095. (1058) Person arrested shall not be committed, or, etc.—A person arrested under the provisions of this title shall not be committed or held to bail for a longer time than ninety days. (O. C. 887.)

Ex parte Lipshitz, 127 S. W. 817.

Art. 1096. (1059) Magistrate shall notify secretary of state, etc.—The magistrate by whose authority a fugitive from justice has been held to bail or committed shall immediately notify the secretary of state of the fact, stating in such notice the name of such fugitive, the state or territory from which he is a fugitive, the crime with which he is charged, and the date when he was committed or held to bail. Such notice may be forwarded, either through the mail or by telegraph. (O. C. 888.)

Art. 1097. (1060) Shall also notify district or county attorney, who shall notify, etc.—The magistrate shall also immediately notify the district or county attorney of his county of the facts of the case, who shall forthwith give notice of such facts to

the executive authority of the state or territory from which the accused is charged to have fled. (Revision, 1879.)

Ex parte Lipshitz, 127 S. W. 817.

Art. 1098. (1061) Secretary of state shall communicate information, etc.—The secretary of state, upon receiving information as provided in article 1096, shall forthwith communicate such information by telegraph, when practicable, or, if not practicable, by mail, to the executive authority of the proper state or territory. (Id.)

Art. 1099. (1062) Accused shall be discharged, when.—If the accused is not arrested under a warrant from the governor of this state before the expiration of ninety days from the day of his commitment or the date of the bail bond, he shall be discharged. (O. C. 889.)

Ex parte Lipshitz, 127 S. W. 817.

Art. 1100. (1063) Shall not be arrested a second time, except, etc.—A person who shall have once been arrested under the provisions of the preceding article, or by habeas corpus, shall not be again arrested upon a charge of the same offense, except by a warrant from the governor of this state. (O. C. 890.)

Ex parte Lipshitz, 127 S. W. 817.

Art. 1101. (1064) Governor of this state can demand fugitive from justice, how.—Whenever the governor of this state may think proper to demand a person who has committed an offense in this state and has fled to another state or territory, he may commission any suitable person to take such requisition; and the accused person, if brought back to the state, shall be delivered up to the sheriff of the county in which it is alleged he has committed the offense. (O. C. 881.)

Art. 1102. (1065) Reasonable pay to person commissioned, etc.—The person commissioned by the governor to bear a requisition for a fugitive from justice to another state or territory shall be paid out of the state treasury a reasonable compensation for his services, to be paid upon the certificate of the governor, specifying the services rendered and the amount allowed therefor. (O. C. 881.)

Art. 1103. (1066) Governor may offer a reward, when.—The governor may, whenever he deems it proper, offer a reward for the apprehension of any person accused of a felony in this state, and who is evading an arrest. (Revision, 1879.)

Art. 1104. (1067) Shall be published, how.—When the governor offers a reward, he shall cause the same to be published in such manner as, in his judgment, will be most likely to effect the arrest of the accused. (Id.)

Art. 1105. (1068) Reward shall be paid by state.—The person who may become entitled to such reward shall be paid the same out of the state treasury upon the certificate of the governor, stating the amount thereof, and that such person is entitled to receive the same, and the facts which so entitle such person to receive it. (Id.)

Art. 1105a. List of fugitives to be sent to adjutant general.—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. (Acts 1887, p. 44, sec. 1; Amend. 1895, Sen. Jour. No. 97, p. 484.)

The above provision was omitted from the revision of 1911. As it is directly pertinent to the subject of fugitives from justice, it is inserted in this compilation for convenience of reference.

TITLE 15

OF COSTS IN CRIMINAL ACTIONS

CHAPTER ONE

TAXATION OF COSTS

Art. 1106. (1069) Certain officers shall keep fee books.—Each clerk of a court, county judge, sheriff, justice of the peace, constable, mayor, recorder and marshal, in this state, shall keep a fee book, and shall enter therein all fees charged for service rendered in any criminal action or proceeding; which book shall be subject to the inspection of any person interested in such costs. (Acts 1876, p. 203, sec. 22.)

Art. 1107. (1070) (1041) Fee book shall show what.—The fee book shall show the number and style of the action or proceeding in which the costs are charged; and each item of costs shall be stated separately; and it shall further name the officer or person to whom such costs are due.

Art. 1108. (1071) (1042) No costs not provided for by law.—No item of costs in a criminal action or proceeding shall be taxed that is not expressly provided for by law.

See Arbuthnot v. S., 43 S. W. 1024.

Art. 1109. (1072) Costs payable in lawful currency.—All costs in criminal actions or proceedings shall be due and payable in the lawful currency of the United States. (Acts 1876, p. 284, sec. 1.)

Art. 1110. (1073) No costs payable until, etc.—No costs shall be payable by any person whatsoever 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 costs, signed by the officer to whom such costs are due, or by whom the same are charged. (Id. p. 293, sec. 23.)

Art. 1111. (1074) (1045) Bill of costs shall accompany case, when.—Whenever a criminal action or proceeding is taken by appeal from one court to another, or whenever the same is in any other way transferred from one court to another, it shall be accompanied by a full and complete bill or account of all costs that have accrued in such action or proceeding; which bill or account shall be certified to, and signed by the proper officer of the court from which the same is forwarded.

Art. 1112. (1075) (1046) Costs shall not be taxed after defendant has paid.—No further costs shall be taxed against a defendant or collected from him in a criminal case, after he has paid the amount of costs taxed against him at the time of such payment, unless otherwise adjudged by the court upon a proper motion filed for that purpose.

Art. 1113. (1076) (1047) Costs may be retaxed, when and how.—Whenever costs have been erroneously taxed against a defendant, he may have the error corrected, and the costs properly taxed, upon filing a motion, in writing, for that purpose, in the court in which the case is then pending, or was last pending. Such motion may be made at any time within one year after the final disposition of the case in which the costs were taxed, and not afterward; and notice of such motion shall be given to the party or parties to be affected thereby, as in the case of a similar motion in a civil action; and the court hearing the same shall render such judgment therein as the facts and the law may require.

Art. 1114. (1077) (1048) Fee book evidence, etc.—The items of costs taxed in an officer's fee book shall be prima facie evidence of the correctness of such items, and the same shall be considered correct until shown by satisfactory evidence to be otherwise.

CHAPTER TWO

OF COSTS PAID BY THE STATE

1. FEES AND COMPENSATION IN GENERAL

Art. 1115. (1078) Fees paid to attorney general.—The attorney general shall receive from the state the following fees:

1. In each case of felony appealed to the court of criminal appeals, where the appeal is dismissed or where the judgment of the court below is affirmed, the sum of twenty dollars.

2. In the case of habeas corpus heard before the court of criminal appeals when the applicant is charged with a felony, the sum of twenty dollars. (Acts 22d Leg., S. S. ch. 16, sec. 59; Acts 1876, p. 284, sec. 2.)

Art. 1116. (1079) Fees to clerk of court of criminal appeals.—The clerk of the court of criminal appeals, in every case of felony brought before such court by appeal, shall receive from the state the sum of ten dollars. (Acts 22d Leg., S. S. ch. 16, sec. 60; Acts 1876, p. 284, sec. 5.)

Art. 1117. (1080) (1051) Fees to be audited.—The fees allowed the attorney general and the clerk of the court of criminal appeals by the two preceding sections shall be audited and paid out of the state treasury upon the certificate of the court of criminal appeals, or of any one of the judges thereof, that the same is correct. (Acts 22d Leg., S. S. ch. 16, sec. 61.)

Art. 1117a (1119 and 1137, Rev. C. C. P. 1911). (1092) Fees in examining courts, etc.—County judges, justices of the peace, sheriffs, constables, district and county attorneys and district clerks shall be allowed the following fees:

In all cases where county judges and justices of the peace shall sit as examining courts in felony cases, they shall be entitled to the same fees allowed by law for similar services in misdemeanor cases to justices of the peace, and ten cents for each one hundred words for writing down testimony, to be paid by the state, not to exceed three dollars for all his services in any one case.

Sheriffs and constables serving process and attending any examining court in the examination of any felony case, shall be entitled to such fees as are fixed by law for similar services in misdemeanor cases, to be paid by the state, not to exceed four dollars in any one case.

District and county attorneys, for attending and prosecuting any felony case before an examining court, shall be entitled to a fee of five dollars to be paid by the state for each case prosecuted by him before such court; provided, such fee shall not be paid, except in cases where the testimony of the material witnesses to the transaction shall be reduced to writing, subscribed and sworn to by said witness.

The fees mentioned in this article shall become due and payable only after the indictment of the defendant for the offense of which he was charged in the examining court, and upon an itemized account sworn to by the officers claiming such fees, approved by the judge of the district court.

Only one fee shall be allowed for an examining trial, though more than one defendant is joined in the complaint; and when defendants are proceeded against separately, who could have been proceeded against jointly, but one fee shall be allowed in all cases that could have been so joined; and the account of the officer and the approval of the judge must show that the provisions of this article are complied with. (Act March 3, 1883, p. 22; Acts 1903, ch. 142; Acts 1907, S. S., p. 466, amending art. 1092, Rev. C. C. P. 1895.)

The above provision, amendatory of art. 1092, Rev. C. C. P. 1895, was divided by the revision commissioners of 1911, part of it being inserted as art. 1119, and the other part as art. 1137. No reason appears for this separation. Art. 1128 Rev. C. C. P. 1911, a seemingly spurious creation of the revision commissioners, has made art. 1119, Rev. C. C. P. 1911, applicable to counties casting 3,000 votes or more, while art. 1137 was cast into the lot of counties casting less than 3,000 votes. An examination of the act of 1897, and a comparison of its provisions with the other legislation on the subject of this chapter of the statutes seems to result in the conclusion that the act of 1897, in dividing the counties into two classes, was intended to have but a limited scope, and was not designed to array all the legislation on the subject of fees into two divisions, as is done by the unfortunate insertion of art. 1128 in the Rev. C. C. P. of 1911. The sensible disposition of the matter would seem to be to limit the operation of the act of 1897 to the ordinary fees of the officers named. Much of the legislation is obviously incapable of classification to one or the other of the county groups, and is clearly applicable to all the counties. While the act of 1897 left the then existing provisions to apply to counties casting less than 3,000 votes, some of the subsequent amendments of these old provisions seem to have been made without legislative realization of the effect of the act of 1897, and some of such amendments introduce new features, which are seemingly intended to apply to all the counties. The compilers of this statute, in order to make the provisions capable of being understood, have renumbered and rearranged the articles of the statute and placed them under appropriate headings. The decisions in such cases as Berry v. S., 156 S. W. 626; Stevens v. S., 159 S. W. 505; Robertson v. S., 159 S. W. 713; and Williams v. S., 159 S. W. 732, seem to warrant this course.

Art. 1117b (1120, Rev. C. C. P. 1911). Compensation allowed district attorneys of districts composed of two counties or more; assistant district attorney; salary; removal.—In addition to the five hundred dollars now allowed them by law, dis-

trict attorneys in all judicial districts of this State composed of two counties or more shall receive from the State as compensation for their services, the sum of fifteen dollars for each day they attend the session of the district court in their respective districts in the necessary discharge of their official duty, and fifteen dollars per day for each day they represent the State at examining trials, inquest proceedings and habeas corpus proceedings in vacation; said fifteen dollars per day to be paid to the district attorneys, upon the sworn account of the district attorney, approved by the district judge, who shall certify that the attendance of said district attorney for the number of days mentioned in his account was necessary, after which said account shall be recorded in the minutes of the district court; provided, that the maximum number of days for such attendance and service for which the compensation is allowed shall not exceed one hundred and seventy days in any one year; and, provided further, that all fees in misdemeanor cases, and commissions and fees heretofore allowed district attorneys under the provisions of Article 1118 of the Code of Criminal Procedure, and in Chapter 5 of the General Laws passed at the Special Session of the Twenty-fifth Legislature, in districts composed of two or more counties shall, when collected, be paid to the clerk of the district court, who shall pay the same over to the State Treasurer; provided, the provisions of this bill shall not apply to district attorneys whose last preceding annual report of himself or his predecessor shows that he or his predecessor making such report received in fees, under the criminal laws, over two thousand four hundred and ninety-five dollars. Provided, further, that in districts composed of two or more counties, and in which said district there is a county containing a city of thirty-five thousand population or over, according to the last federal census, the district attorney in such district shall, with the approval of the county commissioners court of such county, be authorized to appoint one assistant district attorney, who shall receive a salary of not to exceed one hundred and fifty dollars per month, such salary to be paid by such county, payable monthly; and provided, further that such assistant district attorney, when so appointed, shall take the oath of office, and be authorized to represent the State in such county, and such authority to be exercised under the direction of the district attorney, and such assistant district attorney shall be subject to removal at the will of the district attorney. Such assistant district attorney shall be authorized to perform any duty devolving upon the district attorney and to perform and exercise any power conferred by law upon the district attorney when by him so authorized. (Acts 1909, p. 238; Acts 1907, p. 326; Acts 1915, ch. 127, sec. 1; Acts 1919, ch. 70, sec. 1.)

Acts 1915, ch. 127, sec. 1, purports to amend "article 1120, of Title 15, of chapter 2, of C. C. P."

The position of the above provision in the statutes has been changed in this compilation, so as to remove it from the effect of art. 1128, Rev. C. C. P. 1911, an article inserted by the revision commissioners under a seeming misapprehension. See note under art. 1117a. The provision for compensation of district attorneys in districts containing several counties has apparently no relation to the division of counties into classes made by Acts 1897, S. S. ch. 5. It would seem that the act is applicable to all the counties of the state.

Art. 1117c (1121, Rev. C. C. P. 1911). (1082) Where there are several defendants.—If there be more than one defendant in a case, and they are tried jointly, but one fee shall be allowed the district or county attorney. If the defendants sever, and are tried separately, a fee shall be allowed for each trial in accordance with the provisions of the preceding article, except in habeas corpus cases, in which cases only one fee shall be allowed, without regard to the number of defendants or whether they are tried jointly or separately.

What has been said in the notes to the two preceding articles is applicable to this article. Its number and arrangement have been changed to remove it from the effect of art. 1128, Rev. C. C. P. 1911. The only possible effect that the act of 1897 could have on this article would be to make it applicable to counties casting less than 3,000 votes. The revisers gave it the very opposite effect. It would seem that the above provision applies to all of the counties of the state.

Art. 1117d (1125, Rev. C. C. P. 1911). (1084) When services are rendered by peace officer other than sheriff.—When services have been rendered by any peace officer other than a sheriff, such as are enumerated in the preceding article, such officer shall receive the same fees therefor as are allowed the sheriff; and the same shall be taxed in the sheriff's bill of costs, and noted therein as costs due such peace officer; and, when received by such sheriff, he shall pay the same to such peace officer. (O. C. 953, 954.)

The above provision was, by mistake, made applicable only to counties casting more than 3,000 votes. To avoid this result, its number and its position in the statutes are changed. See notes under the three preceding articles.

Art. 1117e (1126, Rev. C. C. P. 1911). (1085) Sheriff shall not charge fees or mileage, when.—A sheriff shall not charge fees for arrests made by rangers, or mileage for prisoners transported by rangers, or mileage or other fees for transporting a witness under attachment issued from another county, unless such witness refuses to give bail for his appearance, or files an affidavit with such sheriff of his inability to give bail; and a witness who refuses to give bail, or make affidavit of his inability to give bail, shall not be entitled to fees, mileage or expenses, (Act March 31, 1885, p. 76.)

The above provision obviously applies to all the counties of the state, notwithstanding its limitation by art. 1128, Rev. C. C. P. 1911. Its number and position have been changed for the reasons indicated in the notes to the four preceding articles.

Art. 1117f (1135, Rev. C. C. P. 1911). (1090) No costs paid by state, when.—In cases where the defendant is indicated for a felony, and is convicted of an offense less than felony, no costs shall be paid by the state to any officer. (O. C. 952d.)

Art. 1117g (1136, Rev. C. C. P. 1911). (1091) Costs paid by state, a charge against defendant, except.—The costs and fees paid by the state under this title shall be a charge against the defendants in cases where they are convicted, except in cases of capital punishment or of sentence to the penitentiary for life, and, when collected, shall be paid into the treasury of the state. (O. C. 956.)

2. COMPENSATION OF CLERK OF DISTRICT COURT, DISTRICT ATTORNEY, COUNTY ATTORNEY, SHERIFF AND CONSTABLES IN COUNTIES IN WHICH 3,000 OR MORE VOTES ARE CAST

Art. 1117h. Fees and compensation in felony cases.—That hereafter, in all the counties in this State, where there shall have been cast at the next preceding presidential election 3000 votes or over, the clerks of the district courts, district attorneys, county attorneys, sheriffs and constables shall receive from the State the following fees and compensation in felony cases, and no more: (Acts 1897, S. S., p. 5, ch. 5, sec. 1.)

The above section of the act of 1897 was omitted from the revision of 1911. In view of the decisions in Berry v. S., 156 S. W. 626; Stevens v. S., 159 S. W. 505, and other cases, it is included in this compilation to aid in clearing up the complicated situation presented in the revision. See notes under arts. 1117a-1117e, ante.

Art. 1118. (1081) Fees to district and county attorneys.—The district or county attorneys shall receive the following fees:

For all convictions in cases of felonious homicide, when the defendant does not appeal, or dies, or escapes after appeal and before final judgment of the court of criminal appeals, or, when upon appeal, the judgment is affirmed, the sum of forty dollars.

For all convictions of felony when the defendant does not appeal, or dies, or escapes after appealing and before final judgment of the court of criminal appeals, or, when upon appeal, the judgment is affirmed, the sum of twenty-four dollars; provided, that in all convictions of felony where the verdict and judgment is confinement in the state institution for the training of juveniles, the fees of the district or county attorney shall be twelve dollars.

For representing the state in each case of habeas corpus, where the defendant is charged with felony, the sum of sixteen dollars.

For every conviction obtained under the provisions of the anti-trust law, the state shall pay to the county or district attorney in such prosecution the sum of two hundred and fifty dollars; and, if both the county and district attorney shall serve together in such prosecution, such fee shall be divided between them as follows: One hundred dollars to the county attorney, and one hundred and fifty dollars to the district attorney. (Acts 22d Leg., S. S. ch. 16, sec. 62; amended, Acts 1897, 1st S. S. p. 5.)

Arts. 1119-1121.

See arts. 1117a-1117c, ante, and notes thereunder.

Art. 1122. (1083) Fees to sheriff or constable.—The sheriffs and constables in this state shall receive the following fees:

1. For executing each warrant of arrest or capias, for making arrest without warrant, when so authorized by law, the sum of one dollar, and in all cases, five cents per mile for each mile actually and necessarily traveled in going to the place of arrest; and, for conveying the prisoner or prisoners to jail, he shall receive the mileage provided in subdivision five of this act.

2. For summoning or attaching each witness, fifty cents.

3. For summoning a jury in each case, where a jury is actually sworn in, two dollars.

4. For executing death warrant, fifty dollars.

5. For removing or conveying prisoners, for each mile going and coming, including guards, and all other necessary expenses when traveling by railroad, ten cents. When traveling otherwise than by railroad, fourteen cents; provided, that where more than one prisoner is so conveyed or removed at the same time, in addition to the foregoing, he shall only be allowed eight cents per mile for each additional prisoner; provided, that when an officer goes beyond the limits of this state after a fugitive on requisition of the governor, he shall receive such compensation only as the governor shall allow for such services.

6. For each mile the officer may be compelled to travel in executing criminal process, summoning or attaching witnesses, five cents; provided, that in no case shall he be allowed to duplicate his mileage when two or more witnesses are named in the same or different writs in any case, and he shall serve process on them in the same neighborhood or vicinity during the same trip, he shall not charge mileage for serving such witness to or from the county seat, but shall charge only one mileage, and for such additional only as are actually and necessarily traveled in summoning and attaching each additional. When process is sent by mail to any officer away from the county seat, or returned by mail by such officer, he shall only be allowed to charge mileage for the miles actually traveled by him in executing such process; and the return of the officer shall show the character of the services, and miles actually traveled in accordance with this subdivision; and his account shall show the facts.

7. To officers for service of criminal process, not otherwise provided for, the sum of five cents a mile going and returning shall be allowed; provided, if two or more persons are mentioned in the same or different writs, the rule prescribed in subdivision 6 shall apply.

8. For conveying witnesses attached by him to any court, or in habeas corpus proceedings out of his county, or when directed by the judge from any other county to the court where the case is pending, one dollar and fifty cents per day, for each day actually and necessarily consumed in going to, and returning from, such courts, and his actual and necessary expenses by the nearest practical route, or nearest practical public conveyance, the amount to be stated by him in an account which shall show the place where the witness was attached, the distance to the nearest railroad station, and miles actually traveled to each court; if horses or vehicles are used, from whom hired and price paid, and length of time consumed, and amount paid out for feeding horses, and to whom; if meals and lodging were provided, from whom and when, and price paid; provided, that officers shall not be entitled to receive exceeding fifty cents per meal, and thirty-five cents per night for lodging for any witness; and, provided, further, that no item or items for expenses shall be allowed, unless the officer present with his account to the officer whose duty it is to approve the same a receipt in writing for each item of said account, except as to such items as are furnished by the officer himself. And when meals and lodging are furnished by the officer in person con-

veying the witnesses, he shall be allowed to receive not exceeding twenty-five cents per meal, and twenty-five cents per night for lodging. All of the said receipts shall be filed with the clerk of the court approving such accounts. Said accounts shall also show, before said officer shall be entitled to compensation for expenses of attached witnesses, that, before starting with said witnesses to the foreign court, he carried each of them before the magistrate nearest the place of serving the attachment, giving his name and residence, and that said witness made oath in writing before said magistrate, certified copies of which shall be attached to the account, that they were unable to give bond for their appearance at court, or refused to give bond after having been advised by said officer of their right to do so. And the officer shall also present to the court the affidavit of the witness to the same effect, or shall show that the witness refused to make the affidavit; and, should it appear to the court that the witness was willing and able to give bond, the sheriff shall not be entitled to any compensation for conveying such witness. And all accounts for fees in criminal cases by sheriffs shall be sworn to by the officer, before any officer authorized to administer oaths, and shall state that said account is true, just and correct in every particular, and be presented to the judge, who shall, during such term of court, carefully examine such account, and, if found to be correct, in whole or in part, shall so certify, and allow the same for such amount as he may find to be correct. And, if allowed by him, in whole or in part, he shall so certify; and such account, with the affidavit of the sheriff, and certificate of the judge, shall be recorded by the clerk of the district court in a book kept by him for that purpose, which shall constitute a part of the proceedings or minutes of the court. And the clerk shall certify to the original account, and shall show that the same has been recorded; and said account shall then become due; and the same shall constitute a voucher on which the comptroller is authorized to issue a warrant, if such account, when presented to the comptroller, shall be accompanied by a certified copy under the hand and seal of the district clerk, of the returns made on the process for which such officer is claiming fees, corresponding to the amount so claimed in his account. The minutes of the court above provided for, or a certified copy thereof, may be used in evidence against the officer making the affidavit for perjury in case said affidavit shall be wilfully false. When the officer receiving the writ for the attachment of such witness shall take a bond for the appearance of such witness, he shall be entitled to receive from the state one dollar for each bond so taken; but he shall be responsible to the court issuing said writ, that said bond is in proper form, and has been executed by the witness, with one or more good and solvent sureties; and said bond shall, in no case, be less than one hundred dollars; provided, the comptroller may require from such officer a certified copy of all such process before auditing any account; provided, that when no inquest or examining trial has been held, at which sufficient evidence was taken upon which to find an indictment, which fact shall be certified by the grand jury, or, when the grand jury shall state to the district judge that an indictment cannot be procured, except upon the testimony of non-resident witnesses, the district judge may have attachments issued to other counties for witnesses not to exceed the number for which the sheriff may receive pay as provided for by law, to testify before the grand juries; provided, however, that the judge shall not approve the accounts of any sheriff for more than one witness to any one fact, nor more than three witnesses to any one case pending before the grand jury, in which case the sheriff shall receive the same compensation as he does for conveying attached witnesses before the court. Subdivision 8 of this article shall apply to the officers affected thereby in all counties in Texas.

9. For attending a prisoner on habeas corpus, for each day, one dollar and sixty cents, together with mileage as provided in subdivision 5, when removing such prisoner out of the county under an order issued by a district or appellate judge. (Acts 22d Leg. S. S. ch. 93; Acts 1895, p. 146; amended Acts 1909, 1st S. S. p. 21; Acts 1891, pp. 138–140.)

Art. 1123. Fees are due at close of each term of district court.—All fees accruing under this act shall be due and payable at the close of each term of the district court after approval, except as provided for in subdivisions 8 and 9 of the preceding article, which shall be paid when approved by the judge under whose order the writ was issued; provided, that in all cases when the defendant shall be finally convicted of a misdemeanor, the sheriff or constable shall be required to pay back to the state treasurer a sum of money equal to the amount he may have received from the state in such cases; and the said sheriff or constable and their bondsmen shall be responsible to the state for such sums. (Acts 1897, 1st S. S. p. 5, sec. 5.)

Art. 1124. No costs shall be paid by state when.—In cases where the defendant is indicted for a felony, and is convicted of an offense less than a felony, no cost shall be paid by the state to any officer. (Id. sec. 6.)

Arts. 1125, 1126.

See arts. 1117d, and 1117e, ante, and notes thereunder.

Art. 1127. (1086) Fees of district clerk in felony cases.—The clerks of the district courts shall receive, for each felony case tried in such courts by jury, whether the defendant be convicted or acquitted, the sum of eight dollars; for each transcript on appeal or change of venue, eight cents for each one hundred words; for each felony case finally disposed of without trial, or dismissed or nolle prosequi entered, eight dollars; for recording each account of sheriff, the sum of fifty cents; for entering judgment in habeas corpus cases, eighty cents; and for taking down testimony and preparing transcript in habeas corpus cases, eight cents for each one hundred words; but the fees in habeas corpus cases shall, in no event, exceed eight dollars in any one case. (Acts 21st Leg., ch. 45, p. 40; amended, Acts 1897, 1st S. S. p. 5.)

Art. 1127a. Other counties controlled by previously existing laws.—That in those counties where there shall have been cast at the next preceding presidential election less than 3000 votes the clerk of the district courts, district attorneys, county attorneys, sheriffs and constables shall receive from the state the fees and compensation in felony cases allowed under now existing laws, and are not intended to be affected by the provisions of sections 1, 2, 3, 4, 5 and 6 [arts. 1117a, 1118, 1122–1124, 1127] of this act. (Acts 1897, S. S., p. 8, ch. 5, sec. 7.)

The above provision was carried into the revision of 1911 as art. 1128, and was made to read as follows: "In those counties where there shall have been cast at the next preceding presidential election less than three thousand votes, the clerks of the district courts, district attorneys, county attorneys, sheriffs and constables shall receive from the state the fees and compensation in felony cases allowed as follows, and are not intended to be affected by the foregoing provisions of this chapter." In view of what is said in the notes to arts. 1117a-1117f, ante, the provision is inserted in this compilation, as art. 1127a, in the words of its original enactment.

Art. 1128.

See art. 1117a, ante, and note thereunder.

3. FEES AND COMPENSATION OF CLERK OF DISTRICT COURT, DISTRICT ATTORNEY, COUNTY ATTORNEY, SHERIFF AND CONSTABLES IN COUNTIES CASTING LESS THAN 3,000 VOTES

Art. 1129. Fees of district clerk in felony cases in certain counties.—The clerk of the district court shall receive, for each felony case tried in such court by jury, whether the defendant be convicted or acquitted, the sum of ten dollars; for each transcript on appeal or change of venue, ten cents for each one hundred words; for each felony case finally disposed of without trial, or dismissed, or nolle prosequi entered, ten dollars; for recording each account of sheriffs, as provided for in article 1132, the sum of fifty cents.

In habeas corpus proceedings in felony cases, the clerks of the district courts shall be paid by the state, upon the certificate of the judge, the following fees, not to exceed ten dollars in any one case: For taking down the evidence, ten cents for every one hundred words; for entering the judgment of the court, one dollar; for making out transcript in case of appeal, ten cents for every one hundred words. (Act 21st Leg., ch. 45; amended Acts 1903, p. 231; Acts 1897, S. S., p. 5, sec. 2.)

The second paragraph of this article was derived from Acts 1903, p. 230, amending art. 1092, Rev. C. C. P. 1895. Art. 1092, Rev. C. C. P. was again amended by Acts 1907, S. S. p. 466, ch. 14, and the provision as to fees in habeas corpus proceedings was omitted. The result is that this provision had been repealed at the time it was carried into the revision. See Berry v. S., 156 S. W. 626; Stevens v. S., 159 S. W. 505; Robertsen v. S., 159 S. W. 713; Williams v. S., 159 S. W. 732.

The subsisting part of this article is confined in its operation to counties casting less than 3,000 votes at the last presidential election, by Acts 1897, S. S. ch. 5, secs. 1, 7 (arts. 1117h, 1127a, ante).

Art. 1130. Same; sheriff and constable.—To the sheriff or constable, shall be allowed the following fees in all cases when the charge is a felony; and all fees accruing under this article shall be due and payable at the close of each term of the district court, after approval as herein provided, except as provided for in subdivisions 8 and 9, which shall be paid when approved by the judge under whose order the writ was issued; provided, that in all cases when the defendant shall be finally convicted of a misdemeanor, the sheriff shall be required to pay back to the treasurer of the state a sum of money equal to the amount he may have received from the state in such case; and said sheriff and his bondsmen shall be responsible to the state for such sum:

1. For executing each warrant of arrest or capias, or for making arrest without warrant, when authorized by law, the sum of one dollar; and five cents for each mile actually and necessarily traveled in going to place of arrest, and for conveying the prisoner or prisoners to jail, mileage, as provided for in subdivision 5 (Article 1130) shall be allowed; provided, however, that in counties that have a population of less than forty thousand inhabitants, as shown by the last Federal census, the following fees shall apply: For executing each warrant of arrest or capias, or for making arrest without warrant, when authorized by law, the sum of three dollars; and fifteen cents for each mile actually and necessarily traveled in going to place of arrest, and for conveying the prisoner or prisoners to jail, mileage, as provided for in subdivision 5 (Article 1130) shall be allowed; and one dollar shall be allowed for the approval of a bond.

2. For summoning or attaching each witness, fifty cents; provided, however, that in counties that have a population of less than forty thousand inhabitants, as shown by the last Federal census, the following fees shall apply: For summoning or attaching each witness, fifty cents, and where a bond is required of said witness the sum of one dollar shall be allowed for the approval of said bond.

3. For summoning jury in each case where jury is actually sworn in, two dollars.

4. For executing death warrant, fifty dollars.

5. For removing a prisoner, for each mile going and coming, including guards and all other expenses when traveling by railroad, ten cents; when traveling otherwise than by railroad, fifteen cents; provided, that when more than one prisoner is removed at the same time, in addition to the foregoing, he shall only be allowed ten cents a mile for each additional prisoner; provided, further, that when an officer goes beyond the limits of the state after a fugitive, on requisition of the governor, he shall receive such compensation as the governor shall allow for such services.

6. For each mile the officer may be compelled to travel in executing criminal process, summoning or attaching witnesses, five cents; provided that in no case shall he be allowed to duplicate his mileage when two or more witnesses are named in the same or different writs in any case and he shall serve process on them in the same vicinity or neighborhood, during the same trip, he shall not charge mileage for serving such witness to and from the county seat, but shall only charge one mileage, and for such additional miles only as are actually and necessarily traveled in summoning or attaching each additional witness. When process is sent by mail to any officer away from the county seat, or returned by mail by such

officer, he shall only be allowed to charge mileage for the miles actually traveled by him in executing such process, and the return of the officer shall show the character of the service and miles actually traveled in accordance with this sub-division; and his accounts shall show the facts; provided, however, that in counties that have a population of less than forty thousand inhabitants, as shown by the last Federal census, the following fees shall apply; For each mile the officer may be compelled to travel in executing criminal process, summoning or attaching witnesses, ten cents; provided that in no case shall he be allowed to duplicate his mileage when two or more witnesses are named in the same or different writs in any case and he shall serve process on them in the same vicinity or neighborhood, during the same trip, he shall not charge mileage for serving such witness to and from the county seat, but shall only charge one mileage, and for such additional miles only as are actually and necessarily traveled in summoning or attaching each additional witness. When process is sent by mail to any officer away from the county seat, or returned by mail by such officer, he shall only be allowed to charge mileage for the miles actually traveled by him in executing such process, and the return of the officer shall show the character of the service and miles actually traveled in accordance with this sub-division; and his accounts shall show the facts.

7. To officers for service of criminal process not otherwise provided for, the sum of five cents a mile going and returning shall be allowed; provided, if two or more persons are mentioned in the same or different writs, the rules prescribed in sub-division 6 (Article 1130) shall apply; provided, however, that in counties that have a population of less than forty thousand inhabitants, as shown by the last Federal census, the following fees shall apply; To officers for service of criminal process not otherwise provided for, the sum of ten cents a mile going and returning shall be allowed; provided, if two or more persons are mentioned in the same or different writs, the rule prescribed in sub-division 6 (Article 1130) shall apply.

8. For conveying a witness attached by him to any court or grand jury, or in a habeas corpus proceeding out of his county, or when directed by the judge from any other county, to the court where the case is pending, one dollar per day for each day actually and necessarily consumed in going and returning from such court, and his actual necessary expenses, by the nearest practicable route or nearest practicable public conveyance, the amount to be stated by him in an account which shall show the place at which the witness was attached, the distance to nearest railroad station, and miles actually traveled to reach the court; if horses or vehicles were used, from whom hired, and price paid, and length of time consumed, and amount paid out for feeding horses, and to whom; if meals and lodgings were provided, from whom and when and price paid; provided, that officers shall not be entitled to receive exceeding fifty cents per meal and thirty five cents per night for lodging for any witness. Said account shall also show, before said officer shall be entitled to compensation for expenses of attached witnesses, that, before starting with said witnesses to the foreign court, he carried each of them before the magistrate nearest the place of serving the attachment, giving his name and residence, and that said witness made oath in writing before such magistrate, certified copies of which shall be attached to the account, that they were unable to give bond for their appearance at court, or refused to give bond after having been advised by said officer of their right to do so. And the officer shall also present to the court the affidavit of the witness to the same effect, or shall show that the witness refused to make the affidavit; and, should it appear to the court that the witness was able and willing to give bond, the sheriff shall not be entitled to any compensation for conveying such witness; and said accounts shall be sworn to by the officer, before any officer authorized to administer oaths, and shall state that said account is true, just, and correct in every particular, and present same to the judge, who shall, during such term of court, carefully examine such account, and, if found to be correct, in whole or in part, shall so certify, and allow the same for such an amount as he may find to be correct; and, if by him allowed, in whole or in part, he shall so certify; and such account, with the affidavit of the sheriff and certificate of the judge, shall be recorded by the clerk of the district court in a book to be kept by him for that purpose, which shall constitute a part of the proceedings or minutes of the court; and the clerk shall certify to the original account, and shall show that the same has been so recorded; and said account shall then become due, and the same shall constitute a voucher, on which the comptroller is authorized to issue a warrant; and such minutes of the court, or a certified copy thereof, may be used in evidence against the officer making the affidavit, for perjury, in case said affidavit shall be wilfully false. When the officer receiving a writ for the attachment of such witness shall take a bond for the appearance of any such witness, he shall be entitled to receive from the state one dollar for each bond so taken; but he shall be responsible to the court issuing said writ that said bond is in proper form and has been executed by the witness with one or more good or solvent securities; and said bond shall, in no case, be less than one hundred dollars; provided, the comptroller may require from such officer a certified copy of all such process before auditing any account.

9. For attending a prisoner on habeas corpus, for each day, two dollars, together with mileage as hereinbefore provided in subdivision 5, when removing such prisoner out of the county under an order issued by a district or appellate judge. (Acts 1897, S. S. p. 5; Acts 1901, p. 285, and Acts 1901, S. S. p. 21; Acts 1917, ch. 161, sec. 1.)

Art. 1131. Same; district and county attorneys.—The district or county attorney shall be allowed the following fees:

1. For all convictions in case of felonious homicide, when the defendant does not appeal, or dies, or escapes after appeal, and before final judgment of the court of criminal appeals, or when, upon appeal, the judgment is affirmed, the sum of fifty dollars.

2. For all other convictions of felony, when the defendant does not appeal, or dies, or escapes after appealing, and before final judgment of the court of criminal appeals, or when, upon appeal, the judgment is affirmed, the sum of thirty dollars; provided, that in all convictions of felony whereby the verdict and judgment, the defendant is confined in the state institution for the training of juveniles, the fee of the district or county attorney shall be fifteen dollars.

3. For representing the state in each case of habeas corpus, where the defendant is charged with a felony, the sum of twenty dollars. (Acts 22d Leg. S. S. ch. 16, sec. 62; amended Acts 1895, p. 148; 1897, S. S. p. 5, sec. 3.)

3½. COMPENSATION OF DISTRICT ATTORNEYS IN COUNTIES CONTAINING CITIES OF 35,000 INHABITANTS OR OVER, ETC.

Art. 1131a. Compensation allowed district attorneys in counties containing cities of 35,000 inhabitants, or over.—Hereafter in counties which contain cities of thirty-five thousand inhabitants, and over according to the last Federal Census, and also where Army Posts are now located, the District Attorney or the County Attorney, as the case may be, shall, in addition to the compensation as now provided by law, be paid the sum of fifteen dollars per day for not exceeding forty days during any one year, when engaged in prosecuting violators of the law. All time spent by such District Attorney, or county Attorney, in assisting the grand jury in investigating violations of said Act, shall be included within the compensation herein allowed and be considered as that much time spent in such prosecutions. The compensation herein provided for shall be in addition to that heretofore provided as per diem or fees of office, and shall not be included within the limitations of the fee bill. Such compensation shall be paid in the same manner as the per diem and fees of District Attorneys and County Attorneys performing the duties of District Attorneys are now paid, provided that such additional compensation shall not be granted to any officer where the same will increase his entire compensation to more than five thousand dollars per annum. By the word Army Posts as herein mentioned an Army Post shall constitute a permanent Fort which has been established ten years or more. (Acts 1918, 4th C. S., ch. 76, sec. 1.)

4. ACCOUNTS OF OFFICERS

Art. 1132. (1087) Officer shall make out cost bill, and what it shall show.—Before the close of each term of the district court, the district or county attorney, sheriff and clerk of said court shall each make out a bill or account of the costs claimed to be due them by the state, respectively, in the felony cases tried at that term; the bill or account shall show—

1. The style and number of cases in which the costs are claimed to have accrued.

2. The offense charged against the defendant.

3. The term of the court at which the case was disposed of.

4. The disposition of the case, and that the case was finally disposed of, and no appeal taken.

5. The name and number of defendants; and, if more than one, whether they were tried jointly or separately.

6. Where each defendant was arrested or witness served, stating the county in which the service was made, giving distance and direction from county seat of county in which the process is served; and mileage shall be charged for distance by the most direct and practicable route from the court whence such process issued to the place of service.

7. In allowing mileage, the judge shall ascertain whether the process was served on one or more of the parties named therein on the same tour, and shall allow mileage, only for the number of miles actually traveled, and then only for the journey made at the time the service was perfected.

8. The court shall inquire whether there have been several prosecutions for an offense or transactions that is but one offense in law; and, if there is more than one prosecution for the same transaction, or a portion thereof, that could have been combined in one indictment against the same defendant, the judge shall allow fees to sheriffs, clerks and district and county attorneys in but one prosecution.

9. Where the defendants in a case have served on the trial, the judge shall not allow the charges for service of process and mileage to be duplicated in each case as tried; but only such additional fees shall be allowed as are caused by the severance. (Acts 1879, S. S. ch. 46.)

See Stewart v. S., 44 S. W. 505; Escavaille v. Stephens, 119 S. W. 842; Rochelle v. Lane, 148 S. W. 558; Bexar County v. Linden, 205 S. W. 478.

Art. 1133. (1088) Duty of judge to examine bill, etc.—It shall be the duty of the district judge, when any such bill is presented to him, to examine the same carefully, and to inquire into the correctness thereof, and approve the same, in whole or in part, or to disapprove the entire bill, as the facts and law may require; and such bill, with the action of the judge thereon, shall be entered on the minutes of said court; and immediately on the rising of said court, it shall be the duty of the clerk thereof to make a certified copy from the minutes of said court of said bill, and the action of the judge thereon, and transmit the same by mail, in registered letter, to the comptroller of public accounts.

All fees due district clerks for recording all sheriff's accounts shall be paid at the end of said term; and all fees due district clerks for making transcripts on change of venue and on appeal shall be paid as soon as the service is performed; and the clerk's bill for such fees shall not be required to show that the case has been finally disposed of.

Bills for fees for such transcripts shall be approved by the district judge, and, when approved, shall be recorded as part of the minutes of the last preceding term of the court.

In all cases where the defendant charged with a felony is convicted of a misdemeanor, all fees received by the district clerk shall be refunded by him to the state. Id.; amended Act 1903, p. 112.)

Escavaille v. Stephens, 119 S. W. 842; Rochelle v. Lane, 148 S. W. 558; Bexar County v. Linden, 205 S. W. 478.

Art. 1134. (1089) Duty of comptroller on receipt of copy of bill.—It shall be the duty of the comptroller, upon the receipt of such claim, and said certified copy of the minutes of said court, to closely and carefully examine the same, and, if correct, to draw his warrant on the state treasurer for the amount due, and in favor of the officer entitled to the same; provided, that if the appropriation for paying such accounts is exhausted, the comptroller shall file the same away, if correct, and issue a certificate in the name of the officer entitled to the same, stating therein the amount of the claim and character of the services performed. And all such claims or accounts not transmitted to or placed on file in the office of the comptroller of public accounts, within twelve months from the date of the final disposition of the case in which the services were rendered, shall be forever barred; provided, further, that the owners of the claims or accounts that have been barred by the provisions of this article, requiring the same to be transmitted to or placed on file in the office of the comptroller of public accounts, in six months from the date of the final disposition of the case in which the services were rendered, shall have six months from and after the time this act shall take effect to present said claims; and all claims or accounts so presented shall be taken and considered by the comptroller as claims presented within the time allowed by law. (Id.; amended by Act April 11, 1883, p. 75.)

Arts. 1135-1137.

See arts. 1117a, 1117f, 1117g, ante, and notes thereunder.

Art. 1137a. Duty of district judge to examine accounts of sheriff.—It shall be the duty of the district judge to inspect the accounts in felony cases of the sheriffs in his district and to see that no charge is made against the State for serving subpœnas and for the mileage traveled in serving same in any case unless the provisions of Section 1 of this Act [Art. 526a, ante] have been complied with, and if upon examination of the account it shall appear to the district judge that subpœnas have been served by the sheriff, or any of his deputies in cases where the proper applications have not been made and granted as provided for in said Section 1 of this Act, then it shall be the duty of said judge to deduct from said sheriff's account the charges made for serving such subpœnas and the mileage charged for serving same. (Acts 1913, p. 320, ch. 150, sec. 3.)

5. FEES OF WITNESSES

Art. 1137b. Fees of witnesses; proviso.—All witnesses residing in the county of the prosecution, when summoned under the provisions of this Act to appear and give evidence in any felony case, shall be entitled to one dollar per day for each day they may have been necessarily absent from their homes or business in attendance upon court, said fees to be paid by the State, and the Comptroller of Public Accounts is hereby authorized to draw a warrant against the State Treasury for same when the accounts are properly presented to him, approved by the presiding district judge, and when after inspection by him he finds said accounts to be correct; provided, that no witnesses fees shall be paid to peace officers, nor to any witness in habeas corpus cases, or summoned on a motion for change of venue; and provided, further, that no fees shall be approved by the court in any case where the charge includes a misdemeanor case until the case is finally disposed of, and in case of a conviction for misdemeanor no fees shall be paid by the State; and provided, further, that witnesses attending court in more than one case at the same time shall receive fees in only one case; and provided, further that in no event the State shall pay per diem in any one case more than five dollars to any witness in any one case at any one term of the court; and provided, further, that the fee to be collected by the district clerk for swearing each witness to his account for his attendance in a case shall be ten cents. (Acts 1913, 1st C. S., p. 20, ch. 13, sec. 1, amending Acts 1913, ch. 150, sec. 4.)

Acts 1917, ch. 66, sec. 1, repeals "section 4 of the acts of the Regular Session of the Thirty-Third Legislature, as amended by chapter 13 of the First Called Session of the Thirty-Third Legislature, providing for fees for in-county witnesses." The title of the act purports to repeal "section 4, chapter 150, acts of," etc. Took effect 90 days after March 21, 1917, date of adjournment.

Art. 1138. (1093) Fees of subpœnaed or attached witness in felony cases out of the county of his residence.—1. Any witness who may have been recognized, subpœnaed or attached, and given bond for his appearance before any court, or before any grand jury, out of the county of his residence, to give testimony in a felony case, and who shall appear in compliance with the obligations of such recognizance or bond, shall be allowed his actual traveling expenses, not exceeding three cents per mile going to and returning from the court or grand jury, by the nearest practicable conveyance, and one dollar per day for each day he may necessarily be absent from home as a witness in such case.

Witnesses shall receive from the state, for attendance upon district courts and grand juries in counties other than that of their residence, in obedience to subpœnas issued under the provisions of this act, their actual traveling expenses, not exceeding three cents per mile, going to and returning from the court or grand jury, by the nearest practicable conveyance, and one dollar per day for each day they may necessarily be absent from home as a witness, to be paid as now provided by law; and the foreman of the grand jury, or clerk of the district court, shall issue to such witness certificates therefor, after deducting therefrom the amounts advanced by the officers serving said subpœnas, as shown by the returns on said subpœnas; which certificates shall be approved by the district judge, and recorded by the clerk in a well-bound book kept for that purpose; provided, that when an indictment can be found from the evidence taken before an inquest or examining trial, no subpœna or attachment shall issue for a witness who resides out of the county in which the prosecution is pending to appear before a grand jury; and provided, further, that when the grand jury shall certify to the district judge that sufficient evidence cannot be secured upon which to find an indictment, except upon the testimony of non-resident witnesses, the district judge may have subpœnas issued as provided for in this law to

other counties for witnesses to testify before the grand jury, not to exceed one witness to any one fact, nor more than three witnesses to any one case pending before the grand jury.

2. Witness fees shall be allowed to such state witnesses only as the district or county attorney shall state in writing are material for the state, and to witness for defendant, after he has made affidavit that the testimony of the witness is material to his defense, stating the facts which are expected to be proved by the witness; which certificate and affidavit must be made at the time of procuring the attachment for, or taking the recognizance of, the witness; provided, that the judge to whom an application for attachment is made may, in his discretion, grant or refuse such application, when presented in term time. No attachment shall be issued in a felony case until the state's attorney shall have first made the statement in writing, or the defendant shall have made the affidavit which will authorize the payment of the witness to be attached.

3. Before the close of each term of the district court, the witness shall make affidavit in writing, stating the number of miles he will have traveled going to and returning from the court, by the nearest practicable conveyance, and the number of days he will have been necessarily absent going to and returning from the place of trial, which affidavit shall be filed with papers of the case; provided, no witness shall receive pay for his services as a witness in more than one case at any one term of the court; provided, further, that fees shall not be allowed to more than two witnesses to the same fact, unless the judge of the court before whom the cause is tried shall, after such case shall have been disposed of, certify that such witnesses, claiming fees as herein provided, were necessary in the cause; nor shall any witness, recognized or attached for the purpose of proving the general character of the defendant, be entitled to the benefits hereof.

4. It shall be the duty of the district or criminal judge, when any such bill is presented to him, to examine the same carefully, and to inquire into the correctness thereof and to approve the same, in whole or in part, or to disapprove the entire bill, as the facts and law may require; and said bill, with the action of the judge thereon, shall be entered on the minutes of said court; and, immediately on the rising of said court, it shall be the duty of the clerk thereof to make a certified copy from the minutes of said court of said bill, and the action of the judge thereon, and transmit the same by mail, in registered letter, to the comptroller of public accounts; for which service the clerk shall be entitled to a fee of twenty-five cents, to be paid by the witness.

5. It shall be the duty of the comptroller, upon the receipt of such claim and said certified copy of the minutes of said court, to carefully examine the same, and, if correct, to draw his warrant on the state treasurer for the amount due, and in favor of the witness entitled to the same; provided, if the appropriation for paying such accounts is exhausted, the comptroller shall file the same away, if correct, and issue a certificate in the name of the witness entitled to the same, stating therein the amount of the claim; and all such claims or accounts not transmitted to, or placed on file in, the office of the comptroller of public accounts within twelve months from the date of the final disposition of the case in which the witness was attached or recognized to testify, shall be forever barred; and all laws and parts of laws in conflict with the provisions of this bill are hereby repealed. (Act 1903, p. 230; Act 1905, p. 375; Acts 1883, p. 117.)

See Murray v. Gillespie, 72 S. W. 160.

CHAPTER THREE

OF COSTS PAID BY COUNTIES

Art. 1139. (1094) County shall be liable for what costs.—Each county shall be liable for all the expenses incurred on account of the safe keeping of prisoners confined in their respective jails, or kept under guard, except prisoners brought from another county for safe keeping, or from another county on habeas corpus or change of venue; in which cases, the county from which the prisoner is brought shall be liable for the expense of his safe keeping. (O. C. 957.)

See Galveston Co. v. Ducie, 45 S. W. 798; McConnell v. Coleman Co., 51 S. W. 526.

Art. 1140. (1095) Shall be responsible for food and lodging of jurors.—Each county shall be liable for the expenses of food and lodging for jurors impaneled in a case of felony; but, in such cases, no scrip shall be issued or money paid to the jurors whose expenses are so paid. (O. C. 958.)

Art. 1141. (1096) Juror may pay his own expenses and draw scrip.—A juror may pay his own expenses and draw his scrip; but the county is responsible in the first place for all the expenses incurred by the sheriff in providing suitable food and lodging for the jury, not to exceed, however, one dollar and twenty-five cents a day. (O. C. 959.)

Art. 1142. (1097) Allowance to sheriff for prisoners.—For the safe keeping, support and maintenance of prisoners confined in jail or under guard, the sheriff shall be allowed the following charges:

1. For each prisoner for each day such amount as may be fixed by the commissioners' court, provided, the same shall be reasonably sufficient as compensation for such service, and in no event shall it be less than forty cents per day for each prisoner, nor more than fifty cents for each prisoner per day.

2. For necessary medical bill and reasonable extra compensation for attention to a prisoner during sickness, such an amount as the commissioners' court of the county where the prisoner is confined may determine to be just and proper.

3. The reasonable funeral expenses in case of death. (Acts 1876, p. 290, sec. 11; Acts 1911, p. 107, sec. 1.)

See Hammond v. Lamar Co., 44 S. W. 179; Harris County v. Hammond, 203 S. W. 445.

Art. 1143. (1098) Allowance for jail guards.—The sheriff shall be allowed for each guard necessarily employed in the keeping of prisoners two dollars for each day, and there shall not be any allowance made for the board of such guard nor shall any allowance be made for the jailer or his turnkey, except in counties having a population

of forty thousand (40,000) or more and also containing a city having a population of twenty-five thousand (25,000) or more according to the last United States census, the commissioners' court may allow each jail guard, jailer and turnkey three dollars per day. (Act Aug. 23, 1876, p. 290; Acts 1909, p. 98; Acts 1915, 1st C. S., p. 40, ch. 20, sec. 1; Acts 1917, ch. 68, sec. 1.)

Ledbetter v. Dallas County, 111 S. W. 193.

Art. 1144. (1099) Sheriff shall pay what expenses, to be reimbursed by county.—It is the duty of the sheriff to pay the expenses of jurors impaneled in cases of felony (except when they are paid by the juror himself) the expense of employing and maintaining a guard, and to support and take care of all prisoners, for all of which, he shall be reimbursed by the proper county according to the rates fixed in the two preceding articles. (O. C. 961.)

Art. 1145. (1100) Sheriff shall present account to district judge.—At each term of the district court of his county, the sheriff may present to the district judge presiding his accounts for all expenses incurred by him for food and lodging of jurors, in cases of trials for felony during the term at which his account is presented. Such account shall state the number and style of the case or cases in which the jurors were impaneled, and specify by name each juror's expenses paid by such sheriff, and the number of days the same were paid, and shall be verified by the affidavit of such sheriff. (O. C. 962.)

Art. 1146. (1101) Judge shall examine account, etc.—The account provided for in the preceding article shall be carefully examined by the district judge; and he shall approve the same, or so much thereof as he finds to be correct. He shall write his approval on said account, specifying the amount for which the same is approved, and shall date and sign the same officially, and cause the same to be filed in the office of the clerk of the district court of the county liable therefor. (O. C. 983.)

Art. 1147. (1102) Judge shall give sheriff draft upon county treasurer.—The district judge shall give to the sheriff a draft upon the county treasurer of the proper county for the amount of each account allowed by him; and the same, when presented to the county treasurer, shall be paid out of any moneys in his hands, not otherwise legally appropriated, in the same manner as jury certificates are paid. (O. C. 964.)

Art. 1148. (1103) Account for keeping prisoners.—At each regular term of the commissioners' court, the sheriff shall present his account to such court for the expenses incurred by him since the last account presented for the safe keeping, support and maintenance of prisoners, including guards employed, if any. Such account shall state the name of each prisoner, and each item of expense incurred on account of such prisoner, and the date of each item, the name of each guard employed, the length of time employed, and the purpose of such employment, and shall be verified by the affidavit of the sheriff.

Art. 1149. (1104) Commissioners' court shall examine account, and order draft, etc.—The commissioners' court shall examine the account named in the preceding article, and allow the same, or so much thereof as may be reasonable and in accordance with law, and shall order a draft to be issued to the sheriff for the amount so allowed, upon the treasurer of the county; and such account shall be filed and safely kept in the office of the clerk of such court.

Art. 1150. (1105) (1073) Expenses, etc., of prisoner from another county.—If the expenses incurred are for the safe keeping, support and maintenance of a prisoner from another county, the sheriff shall make out a separate account therefor, such as is provided for in article 1108, and submit the same to the county judge of his county, who shall carefully examine the same, and write thereon his approval therefor for such amount as he finds to be correct, stating the amount so approved by him, and shall date and sign such approval officially and return the same to the sheriff.

Art. 1151. (1106) (1074) Same subject.—The account mentioned in the preceding article shall then be presented to the commissioners' court of the county liable for the same, at a regular term of such court; and such court shall, if the charges therein be in accordance with law, order a draft to issue upon the treasurer of such county in favor of the sheriff to whom the same is due for the amount allowed.

Art. 1152. (1107) Same in case of change of venue.—In all causes where indictments have been presented against persons in one county charging them with any offense against the Penal Code, and such causes have been removed by change of venue to another county, and tried therein, the county from which such cause is removed shall be liable for all expenses incurred for pay of jurors in trying such causes. (Acts 1881, p. 52.)

Art. 1153. (1108) Same subject.—It shall be the duty of the county commissioners of each county in the state, at each regular meeting, to ascertain whether, since the last regular meeting, any person has been tried for crime upon a change of venue from any other county; and, if they shall find such to be the case, it shall be their duty to make out an account against such county from which such cause was removed, showing the number of days the jury in such case was employed therein, and setting forth the amount paid for such jury service; such account shall then be certified to as correct by the county judge of such county, under his hand and seal, and be, by him, forwarded to the county judge of the county court of the county from which the said cause was removed; which account shall be paid in the same manner as accounts for the safe keeping of prisoners in article 1151 of this Code. (Id.)

Art. 1154. (1109) Fees of county judge.—There shall be paid to the county judge by the county, the sum of three dollars for each criminal action tried and finally disposed of before him. (Acts 1879, S. S. ch. 44.)

Art. 1155. (1110) How collected.—The county judge shall present to the commissioners' court of his county, at a regular term thereof, an account, in writing, specifying each criminal action in which he claims the fee allowed by the preceding article; which account shall be certified to be correct by

such judge, and the same shall be filed with the clerk of the county court. The commissioners' court shall approve such account for such amount as they may find to be correct, and order a draft to be issued upon the county treasurer in favor of such judge for the amount so approved. (Id.)

Art. 1155a. Fees and salary of judge of county court of Bexar county for criminal cases.—The judge of the County Court of Bexar County for Criminal Cases shall collect the same fees provided by law for county judges in similar cases, all of which shall be paid by him monthly into the County Treasury, and he shall receive a salary of three thousand ($3,000.00) dollars annually, to be paid monthly out of the County Treasury by the Commissioners Court. The county judge of Bexar County shall receive, in addition to the other fees allowed by law, a salary for the ex-officio duties of his office of not less than twenty-five hundred ($2,500.00) dollars per annum. (Act 1915, p. 80, ch. 39, sec. 12.)

Art. 1156. (1111) Fee of justice for holding an inquest.—A justice of the peace shall be entitled, for business connected with an inquest on a dead body, including certifying and returning the proceeding to the proper court, the sum of five dollars, to be paid by the county; provided, that when an inquest is held over the dead body of a state penitentiary convict, the state shall pay the inquest fees allowed by law of all officers, upon the approval of the account therefor by the county commissioners' court of the county in which the inquest may be held and the superintendent of penitentiaries; and provided, further, that no inquest shall be held on the dead body of a state penitentiary convict if said convict died from disease and was attended by a regular physician, and a certificate by said physician showing said facts be filed in the office of the county judge of the county in which said convict died and in the office of the superintendent of penitentiaries. (Acts 1876, p. 291, sec. 12; amended Acts 1883, p. 39.)

Art. 1157. (1112) (1079) Commissioners' court shall act upon account.—The officer or officers claiming pay for services mentioned in the preceding article shall present to the commissioners' court of the county, at a regular term of such court, an account therefor, verified by the affidavit of such claimant; and, if such account be found correct, the court shall order a draft to issue upon the county treasurer in favor of such claimant for the amount due him; and such account shall be filed and safely kept in the office of the clerk of the county court.

See Fears v. Ellis Co., 49 S. W. 139.

Art. 1158. (1113) Pay of petit jurors.—Each juror who serves in the trial of any criminal case in any court of criminal jurisdiction, or who has been sworn as a juror for the term or week, shall receive two dollars and fifty cents ($2.50) for each day and for each fraction of a day he may serve or attend as such juror; provided, that this provision shall not extend to mayors' and recorders' courts, taking cognizance of offenses against municipal ordinances; provided, further, that the jurors in justice courts, who serve in the trial of criminal cases in such courts, shall receive fifty cents in each case they may sit as jurors; provided, that no juror in such court shall receive more than one dollar ($1.00) for each day or fraction of a day he may serve as such juror. (Act Feb. 21, 1879; amended by Acts 1881, p. 32; Acts 1911, p. 110, sec. 1.)

Art. 1159. (1114) (1082) If not sworn, not entitled to pay.—A person who has been summoned and who attends as a juror, but who has not been sworn as such in a case, or for the term or week, shall not receive pay as a juror.

Art. 1160. (1115) Pay of grand jurors.—Grand jurors shall each receive two dollars and fifty cents ($2.50) per day for each day and for each fraction of a day that they may serve as such. (Act 1883, p. 11; Acts 1911, p. 110, sec. 1.)

Art. 1161. (1116) (1084) Pay of bailiffs.—Bailiffs for the grand jury shall receive such pay for their services as may be determined by the district court of the county where the service is rendered; and the order of the court in relation thereto shall be entered upon the minutes, stating the name of the bailiff, the service rendered by him, and the amount of pay allowed therefor; provided, the pay shall not exceed two dollars and fifty cents per day for riding bailiffs during the time they ride, and not exceed one dollar and fifty cents per day for other bailiffs; and provided, further, that the deputy sheriff shall not receive pay as bailiff.

Art. 1162. (1117) (1085) Certificates for pay of jurors and bailiffs.—The amount due jurors and bailiffs shall be paid by the county treasurer, upon the certificate of the clerk of the court in which such service was rendered, or of the justice of the peace, mayor or recorder in which such service was rendered; which certificate shall state the service, when rendered, by whom rendered, and the amount due therefor.

Art. 1163. (1118) Drafts and certificates receivable for county taxes.—Drafts drawn and certificates issued under the provisions of this chapter shall, without further action or acceptance by any authority, except registration by the county treasurer, be receivable at par for all county taxes. The same may be transferred by delivery; and no ordinance, rule or regulation made by the commissioners' court or other office or officers of a county shall defeat the right of a holder of any such draft or certificate to pay county taxes therewith. (O. C. 968.)

Art. 1163a. Costs to be paid officers.—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. (Acts

1876, p. 229, sec. 8; amend. 1895, p. 179, ch. 115, sec. 1; Rev. Civ. St. 1911, art. 6247.)

The above provision was not carried into the revision of 1911. It is included in this compilation on account of its pertinence to the subject of costs in criminal cases.

CHAPTER FOUR

OF COSTS TO BE PAID BY DEFENDANT

1. IN THE COURT OF CRIMINAL APPEALS

Art. 1164. (1119) Fees of attorney general in misdemeanor cases.—The attorney general shall, in every conviction of offenses against the penal laws in cases of misdemeanors, when the judgment of the court below is affirmed by the court of criminal appeals, or the appeal is dismissed by said court, receive the sum of ten dollars. (Acts 22d Leg., S. S. ch. 16, sec. 63.)

See Hogg v. S., 48 S. W. 580.

Art. 1165. (1120) Clerk allowed fees not to exceed $2500 per annum.—The clerk of the court of criminal appeals shall, in every case where the judgment is affirmed, receive the sum of ten dollars; provided, the entire sum such clerk shall receive as compensation for his services shall not exceed two thousand and five hundred dollars per annum; and any sum over and above that shall be paid by him to the treasury of the state, under such rules as may be prescribed by the comptroller, to be approved by the judges of the criminal court of appeals. (Id. sec. 64.)

Art. 1166. (1121) Shall be taxed against defendant.—The fees named in the preceding sections shall be taxed against the defendant and collected as in other cases. (Acts 1876, p. 284, sec. 2.)

Art. 1167. (1122) Costs when taxed against defendants.—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 such case shall be adjudged against the defendant, 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. (Acts 22d Leg., S. S. ch. 16, sec. 21; also art. 1670 [1063] Civ. St.)

2. IN THE DISTRICT AND COUNTY COURTS

Art. 1168. (1123) Fees of district and county attorneys.—District and county attorneys shall be allowed the following fees, to be taxed against the defendant:

For every conviction under the laws against gaming when no appeal is taken, or when, on appeal, the judgment is affirmed, fifteen dollars.

For every other conviction in cases of misdemeanor, where no appeal is taken, or where, on appeal, the judgment is affirmed, ten dollars. (Act Aug. 23, 1876, p. 284, sec. 7.)

Art. 1169. [Omitted.]

This article, relating to fees of county attorneys in local option cases, is omitted from this compilation as having been rendered inoperative by the amendment of art. 16, § 20 of the state Constitution, and by Acts 1919, 2d C. S., ch. 78, ante, Penal Code, arts. 588¼-588¼tt.

Art. 1170. (1124) (1091) In case of joint defendants.—Where there are several defendants in a case, and they are tried together, but one fee shall be allowed and taxed in the case for the district or county attorney; but, where the defendants sever and are tried separately, a fee shall be allowed and taxed for each trial.

Art. 1171. (1125) (1092) Attorney appointed entitled to the fee.—When an attorney is appointed by the court to represent the state in the absence of the district or county attorney, the attorney so appointed shall be entitled to the fee allowed by law to the district or county attorney.

Art. 1172. (1126) Fees of district and county clerks.—The following fees shall be allowed the clerks of the district and county courts:

1. For issuing each capias or other original writ, seventy-five cents.
2. For entering each appearance, fifteen cents.
3. For docketing cause, to be charged but once, twenty-five cents.
4. For swearing and impaneling a jury, and receiving and recording the verdict, fifty cents.
5. For swearing each witness, ten cents.
6. For issuing each subpœna, twenty-five cents.
7. For each additional name inserted therein, fifteen cents.
8. For issuing each attachment, fifty cents.
9. For entering each order not otherwise provided for, fifty cents.
10. For filing each paper, ten cents.
11. For entering judgment, fifty cents.
12. For entering each continuance, twenty-five cents.
13. For entering each motion or rule, ten cents.
14. For entering each recognizance, fifty cents.
15. For entering each indictment or information, ten cents.
16. For each commitment, one dollar.
17. For each transcript on appeal, for each one hundred words, ten cents. (Acts 1876, p. 289, sec. 10.)

Art. 1173. (1127) Fees of sheriff and other peace officers.—The following fees shall be allowed the sheriff, or other peace officer performing the same services, in misdemeanor cases, to be taxed against the defendant on conviction:

1. For executing each warrant of arrest or capias, or making arrest without warrant, one dollar.
2. For summoning each witness, fifty cents.
3. For serving any writ not otherwise provided for, one dollar.
4. For taking and approving each bond and returning the same to the court house, when necessary, one dollar.
5. For each commitment or release, one dollar.

6. Jury fee in each case actually tried by jury, fifty cents.

7. For attending a prisoner on habeas corpus, when such prisoner, upon a hearing, has been remanded to custody or held to bail, for each day's attendance, two dollars.

8. For conveying a witness attached by him to any court out of his county, his actual necessary expenses by the nearest practicable public conveyance, the amount to be stated by said officer, under oath, and approved by the judge of the court from which the attachment issued.

9. For conveying a prisoner after conviction to the county jail, for each mile, going and coming, by the nearest practicable route, by private conveyance, ten cents a mile, or by railway, seven and one-half cents a mile.

10. For conveying a prisoner arrested on a warrant or capias issued from another county to the court or jail of the county from which the process was issued, for each mile traveled, going and coming, by the nearest practicable route, twelve and a half cents.

11. For each mile he may be compelled to travel in executing criminal process and summoning or attaching witnesses, five cents. For traveling in the service of process not otherwise provided for, the sum of five cents for each mile going and returning. If two or more persons are mentioned in the same writ, or two or more writs in the same case, he shall charge for the distance actually and necessarily traveled in the execution of the same. (Id. sec. 11; amend. 1895, p. 182.)

Art. 1174. Fees of sheriff and other officers in lunacy cases.—In judicial proceedings in cases of lunacy, in each case, the sheriff and county clerk shall be allowed the same fees as are now allowed said officers for similar services in misdemeanor criminal cases; the county attorney shall be allowed a fee of five dollars; provided, that such fees shall be allowed only when a conviction is obtained; said costs to be paid out of the estate of the defendant, if he shall have an estate sufficient therefor; otherwise said costs shall be paid out of the county treasury; and the jurors in such cases shall be allowed fifty cents each, to be paid out of the county treasury. Justices of the peace who may take complaints, issue warrants and subpœnas in such lunacy cases, shall receive the same fees as are now allowed them by law for taking complaints, issuing warrants and subpœnas in criminal misdemeanor cases. Constables shall receive, for executing warrants and serving subpœnas in lunacy cases, the same fees as are now allowed them by law for similar services in criminal misdemeanor cases; such fees to be paid, upon conviction, out of the estate of the defendant, if he shall have an estate sufficient therefor; otherwise the same shall be paid by the county, upon an account approved by the county judge. (Act 1903, p. 110.)

3. IN JUSTICES', MAYORS' AND RECORDERS' COURTS

Art. 1175. (1128) Fees of justices, mayors and recorders.—Justices of the peace, mayors and recorders shall receive the following fees in criminal actions tried before them, to be collected of the defendant in case of his conviction:

1. For each warrant, seventy-five cents.
2. For each bond taken, fifty cents.
3. For each subpœna for one witness, twenty-five cents.
4. For each additional name inserted therein, ten cents.
5. For docketing each case, ten cents.
6. For each continuance, twenty cents.
7. For swearing each witness in court, ten cents.
8. For administering any other oath or affirmation without a certificate, ten cents.
9. For administering an oath or affirmation with a certificate thereof, twenty-five cents.
10. Jury fee where a case is tried by jury, fifty cents.
11. For each order in a case, twenty-five cents.
12. For each final judgment, fifty cents.
13. For each application for a new trial with the final judgment thereon, fifty cents.
14. For each commitment, one dollar.
15. For each execution, one dollar.
16. For making out and certifying the entries on his docket, and filing the same with the original papers of the cause, in each case of appeal, one dollar and fifty cents.
17. For taxing costs, including copy thereof, ten cents.
18. For taking down the testimony of witnesses, swearing them, taking the voluntary statement of the accused, certifying and returning the same to the proper court in examination for offenses, for each one hundred words, twenty cents. (Acts 1876, p. 291, sec. 12.)

Art. 1176. (1129) (1096) Fees of constables and other peace officers.—Constables, marshals or other peace officers who execute process, and perform services for justices, mayors and recorders, in criminal actions, shall receive the same fees allowed to sheriffs for the same services.

Art. 1177. (1130) (1097) Fees of state's attorney.—The attorney who represents the state in a criminal action in a justice's, mayor's or recorder's court shall receive, for each conviction where no appeal is taken, or where, upon appeal, the judgment is affirmed, ten dollars, unless otherwise provided by the ordinance of any incorporated city or town.

Art. 1177a. Costs to be collected as provided by ordinances, but not greater than in justices' courts.—There shall be taxed against, and collected of, each defendant, in case of his conviction before such court, [corporation court] such costs as may be provided for by ordinance of the said city, town or village; but in no case shall the council or board of aldermen of any such city, town or village, prescribe the collection of greater costs than are prescribed by law to be collected of defendants convicted before justices of the peace. (Acts 1899, p. 42, sec. 11.)

See ante, arts. 968d-968f, 968j.

Art. 1178. Fees of county attorneys representing state in corporation courts.—That county attorneys who, in cities of over thirty thousand and under forty thousand population, according to last United States census, represent the state in misde-

meanor cases in the corporation courts thereof, shall receive for such services the same fees as are now provided for by law for similar services in justice courts; and in no case shall there be charged more than one fee, as provided by law. (Act 1907, p. 177.)

Art. 1179. (1131) (1098) In case of several defendants, and where defendant pleads guilty.—Where several defendants are prosecuted jointly, and do not sever on trial, but one attorney's fee shall be allowed; and where a defendant pleads guilty to a charge before a justice, mayor or recorder, the fee allowed the attorney representing the state shall be five dollars.

Art. 1180. (1132) (1099) No fee allowed attorney, etc.—No fee shall be allowed a district or county attorney in any case where he is not present and representing the state, upon the trial thereof, unless he has taken some action therein for the state, or is present and ready to represent the state at each regular term of the court in which such criminal action is pending; provided, however, that when pleas of guilty are entertained and accepted in any justice court, at any other time than the regular term thereof, the county attorney shall receive the sum of five dollars; and in no case shall the county attorney, in consideration of a plea of guilty, remit any part of his lawful fee. (Amended Act 1903, p. 219.)

Art. 1181. Fees of justice of the peace sitting as examining court in misdemeanor case.—That in all cases where justices of the peace shall sit as an examining court in misdemeanor cases, they shall be entitled to the same fees allowed by law for similar services in the trial of misdemeanor cases, to justices of the peace, to be paid by the defendant in case of final conviction; provided, he shall never receive more than three dollars in any one case. (Act 1907, p. 215.)

Art. 1182. Fees of sheriff and other officers in such examining court.—Sheriffs and constables serving process and attending any examining court in the examination of any misdemeanor case, shall be entitled to such fees as are allowed by law for similar services in the trial of misdemeanor cases, to be paid by the defendant in case of final conviction; provided, he shall never receive more than three dollars in any one case. (Id.)

4. JURY AND TRIAL FEES

Art. 1183. (1133) (1100) In district and county courts.—In each criminal action tried by a jury in the district or county court, when the defendant is convicted, there shall be taxed in the bill of costs against him a jury fee of five dollars.

Art. 1184. (1134) (1101) Trial fee in county courts.—In each case of conviction in a criminal action tried in the county court, whether tried by a jury or by the judge, there shall be taxed in the bill of costs against the defendant, or against all defendants where several are tried jointly, a trial fee of five dollars, the same to be collected and paid into the county treasury in the same manner as is provided in the case of a jury fee.

Art. 1185. (1135) (1102) Jury fees in justices', mayors' and recorders' courts.—In each criminal action tried by a jury in a justice's, mayor's or recorder's court, when the defendant is convicted, there shall be taxed in the bill of costs against him a jury fee of three dollars, unless otherwise provided by the ordinances of any incorporated city or town.

Art. 1186. (1136) (1104) Where there are several defendants.—Where there are several defendants tried jointly, only one jury fee shall be taxed against them; but, where they sever and are tried separately, a jury fee shall be taxed in each trial.

Art. 1187. (1137) (1105) Jury fees collected as other costs, etc.—Jury fees shall be collected as other costs in a case, and the officer collecting the same shall forthwith pay the amount collected to the county treasurer of the county where the conviction was had.

5. WITNESS FEES

Art. 1188. (1138) Fees of witnesses in criminal cases.—Witnesses in criminal cases shall be allowed one dollar and fifty cents a day for each day they are in attendance upon the court, and six cents for each mile they may travel in going to or returning from the place of trial. (O. C. 454.)

See McArthur v. S., 57 S. W. 850.

Art. 1189. (1139) Shall be taxed against defendant, upon, etc.—Upon conviction, in all cases, the costs accruing from the attendance of witnesses shall be taxed against the defendant, upon the affidavit in writing of such witness, or of some credible person, stating the number of days that such witness has attended upon the court in the case, and the number of miles he has traveled in going to and returning from the place of trial; which affidavit shall be filed among the papers in the case. (O. C. 457.)

Art. 1190. (1140) (1109) No fees allowed, unless, etc.—No fees shall be allowed to a person as witness fees, unless such person has been subpœnaed, attached or recognized as a witness in the case.

Art. 1191. (1141) (1110) Clerk, etc., shall keep book in which shall be entered, etc.—Each clerk of the district and county court, and each justice of the peace, mayor and recorder, shall keep a book, in which shall be entered the number and style of each criminal action in their respective courts, and the name of each witness subpœnaed, attached or recognized to testify therein, showing whether on the part of the state or the defendant.

Art. 1192. (1142) Witness liable for costs, when.—In all criminal cases where a witness has been subpœnaed and fails to attend, he shall be liable for the costs of an attachment, unless good cause be shown to the court or magistrate why he failed to obey the subpœna. (O. C. 979.)

TITLE 16

COMMISSIONS ON MONEY COLLECTED

Art. 1193. (1143) Commissions allowed district and county attorneys.—The district or county attorney shall be entitled to ten per cent on all fines, forfeitures or moneys collected for the state or county, upon judgments recovered by him; and the clerk of the court in which such judgments are rendered shall be entitled to five per cent of the amount of said judgments, to be paid out of the amount when collected. (Acts 1879, p. 133.)

See S. v. Hart, 70 S. W. 947; McLennan County v. Boggess, 137 S. W. 346; McLennan County v. Boggess, 139 S. W. 1054; McHugh v. Reese, 149 S. W. 743; Bexar County v. Linden, 205 S. W. 478.

Art. 1194. (1144) Commissions allowed sheriff or other officer.—The sheriff or other officer who collects money for the state or county, under any of the provisions of this Code, except jury fees, shall be entitled to retain five per cent thereof when collected. (Acts 1876, p. 287, sec. 7; Acts 1889, ch. 85, p. 95, sec. 12; Id. sec. 14.)

McLennan County v. Boggess, 139 S. W. 1054.

TITLE 17

DELINQUENT CHILDREN

STATE JUVENILE TRAINING SCHOOL

Art. 1195. (1145) Male persons under the age of seventeen accused of felony to be prosecuted as juvenile delinquents; committed to State Industrial School for Boys upon indeterminate sentence; time of detention; proof of age; proviso.—When an indictment is returned by the grand jury of any county charging any male juvenile under the age of seventeen years with a felony, the parent, guardian, attorney or next friend of said juvenile, or said juvenile himself, may file a sworn statement in court, setting forth the age of such juvenile, at any time before announcement of ready for trial is made in the case. When such statement is filed, the judge of said court shall hear evidence on the question of the age of the defendant; and, if he be satisfied from the evidence that said juvenile is less than seventeen years of age, said judge shall dismiss such prosecution and proceed to try the juvenile as a delinquent, under the provisions of this Act. If said juvenile be found to be delinquent, and sentence be not suspended, as provided in the laws of this State in cases of felony on first offense the defendant shall be committed to the State Industrial School for Boys upon an indeterminate sentence; provided, that such defendant shall not be detained in said school after he has reached the age of twenty-one years. Such defendant shall be conveyed to the said school by the probation officer, sheriff or any peace officer designated by the court; provided, that such conviction and detention in said school shall not deprive defendant of any of his rights of citizenship when he shall become of legal age; and provided, further, that the age of the defendant shall not be admitted by the attorney representing the State, but shall be proved to the satisfaction of the court by full and sufficient evidence that the defendant is less than seventeen years of age, before the judgment of commitment to said institution shall be entered. The officer conveying any defendant to said school shall be paid by the county in which conviction is rendered the actual traveling expenses of said officer and defendant; provided, further, that nothing in this Act shall be held to affect, modify or vitiate any judgment heretofore entered confining any defendant to the State Institution for the Training of Juveniles; but the unexpired portion of any such judgment shall be fulfilled by the confinement of any such defendant in the State Industrial School for Boys. (Acts 1909, p. 100; Acts 1889, p. 95; Acts 1913, p. 214, ch. 112, sec. 1.)

Aikins v. S., 91 S. W. 790; Watson v. S., 92 S. W. 807; Bates v. S., 99 S. W. 551; Byrd v. S., 116 S. W. 1146; Perry v. S., 133 S. W. 685; Ragsdale v. S., 134 S. W. 234; Ex parte Ramseur, 195 S. W. 864; Ex parte Medrano, 195 S. W. 865; McLaren v. S., 199 S. W. 811.

Generally under this title see McCallen v. S., 174 S. W. 611; Miller v. S., 200 S. W. 389; Ex parte Pruitt, 200 S. W. 392; Ex parte McLoud, 200 S. W. 394.

Acts 1913, S. S. ch. 6, amending art. 5221 of the Rev. Civ. St. of 1911, changes the name of the institution mentioned above to "The State Juvenile Training School." It seems to have been the intention of the legislature to change the name of the institution from "State Institution for the Training of Juveniles" to "State Industrial School for Boys," but that intention was never carried out. See, in this connection, Ex parte Bartee, 174 S. W. 1051.

Art. 1196. (1146) Duty of officers in case of escapes from institution; cost incurred.—If any person confined in the State Industrial School for Boys, after judgment of conviction for a delinquency, shall escape therefrom, it shall be the duty of any sheriff or peace officer to apprehend and detain him, and report the same to the Superintendent of said school, and they shall be returned by said sheriff or other peace officer to said school, and the cost of said return shall be paid by the State on warrant of the Comptroller, based upon the sworn itemized account of such officer, approved by the Superintendent of said school; said costs to be paid out of any fund appropriated by the Legislature, from time to time, for the apprehension and return of escaped convicts. (Acts 1909, p. 101; Acts 1889, p. 95; Acts 1913, p. 214, ch. 112, sec. 2.)

STATE TRAINING SCHOOL FOR NEGRO BOYS

Art. 1196½. Negro boys under 17 to be confined in State Training School for Negro Boys.—Hereafter all negro male persons under the age of seventeen (17) years, who shall be convicted of a felony or other delinquency, in any court within this State, unless his sentence be suspended as provided by law, or otherwise disposed of or unless by reason of the length of the term for which he is sentenced, he is required under the law to be confined in the State Penitentiary, shall be confined in the State Training School for Negro Boys. (Acts 1917, 3d C. S., ch. 7, sec. 3.)

DELINQUENT CHILD, TO REGULATE THE CONTROL AND TREATMENT OF SAME

See Civil Statutes, title 38, Courts-Juvenile, chapter 2, Delinquent Children.

Art. 1197. Delinquent children.—The words "delinquent Child" shall include any male child under seventeen years of age, or any female child under eighteen years of age,

who violates any law of this State, or who is incorrigible, or who knowingly associates with thieves, vicious or immoral persons, or who knowingly visits a house of ill repute, or who knowingly patronizes or visits any place where any gambling device is or shall be operated, or who patronizes any saloon or place where any intoxicating liquors are sold, or who habitually wanders about the streets in the night time without being on any business or occupation, or who habitually wanders about any railroad yard or tracks, or who habitually jumps on or off of any moving train, or who enters any car or engine without lawful authority, or who is guilty of immoral conduct in any public place. Any such child committing any of the acts herein mentioned shall be considered a "delinquent child," and shall be proceeded against as such in the manner hereinafter provided and as otherwise so provided by law so as to effect the object of this law. Any juvenile found by the Court or Jury to be a delinquent child shall be committed to the place or institution provided by law for juveniles, for an indeterminate period not extending beyond the time when such juvenile will reach the age of twenty-one years. A disposition of any child under this law or any evidence given in such case, shall not, in any civil, criminal, or other cause or proceeding whatever, in any court, be lawful or proper evidence against such child for any purpose whatever except in subsequent cases against the same child under this Act.

When an indictment is returned by the Grand Jury of any county charging any female juvenile under the age of eighteen years with a felony, the parent, guardian, attorney or next friend of such juvenile, or said juvenile herself, may file a sworn statement in court at any time before announcement of ready for trial is made in the case. When such statement is filed the judge of said court shall hear evidence on the question of the age of the defendant, and if he is satisfied from the evidence that said juvenile is less than eighteen years of age, said judge shall dismiss such prosecution and proceed to try the juvenile as a delinquent child, under the provisions of this Act.

If said juvenile be found to be delinquent, and sentence be not suspended as provided in the laws of this State in cases of felony on first offense, defendant on conviction shall be committed to the Girl's Training School, upon an indeterminate period not extending beyond the time that such juvenile will reach the age of twenty-one years, and the jury trying the case shall state in their verdict the time and place of commitment.

If a prosecution for misdemeanor is filed against a male under 17 years of age, or female under 18 years of age, the defendant or other person as named in Article 1195, may file affidavit, setting up her or his age, and on proof of such fact the prosecution shall be maintained against the defendant as a juvenile delinquent, without new charge.

Any proceeding under this Act begun by information and sworn complaint which states upon its face the age of the child as under seventeen years in the case of males and under eighteen years in the case of females, shall not be regarded as charging such child with a felony or a misdemeanor, but as a delinquent child, although such acts would otherwise charge a felony or a misdemeanor. A prosecution and conviction of a juvenile shall be regarded as a criminal, or a misdemeanor, case, and an appeal lies from such conviction directly to the Court of Criminal Appeals of Texas.

In any proceeding in any juvenile court under this Act the court or jury may substitute as a place of commitment any detention home, parental school, or school for girls or boys, established by any county, and the further disposition of the juvenile shall be governed as further provided for by the laws relating to delinquent children. (Acts 1907, p. 137, sec. 1; Acts 1913, p. 215, ch. 112, sec. 3; Acts 1918, 4th C. S., ch. 26, sec. 1.)

Art. 1198. Jurisdiction of district and county courts; jury trial; entry of findings; name of court.—The county and district courts of the several counties of this State shall have jurisdiction in all cases coming within the terms and provisions of this law. In all trials under this Act, any person interested therein may demand a jury. The findings of the court shall be entered in a book to be kept for that purpose, known as the "juvenile record"; and the court, when disposing of cases under this law, may for convenience be called the "juvenile court." (Acts 1907, p. 138, sec. 2; Acts 1913, p. 215, ch. 112, sec. 4.)

Art. 1199. Sworn complaint or information; requisites.—All proceedings under this Act shall be begun by sworn complaint and information filed by the county attorney as in other cases under the laws of this State. In any such complaint any information filed under this Act, the act or acts claimed to have been committed by the child proceeded against shall, in a general way be stated therein as constituting such child a "delinquent child." (Acts 1907, p. 138, sec. 3; Acts 1913, p. 215, ch. 112, sec. 5.)

Art. 1200. Proceedings on complaint; notice to parent or guardian; contempt proceedings against parent or guardian; confinement of child; security for appearance.—Upon filing of complaint under this Act, warrant or capias may issue as in other cases, but no incarceration of the child proceeded against thereunder shall be made or had unless, in the opinion of the judge of the court, or in the absence of the judge, then in the opinion of the sheriff or officer executing the writ, it shall be necessary to insure the attendance of such child in court at such time as shall be required. In order to avoid such incarceration, it shall be the duty of the sheriff or other officer executing the process to serve notice of the proceedings upon the parent or parents of the child, if living and known, or upon the child's legal guardian, or upon any person with whom the child at the time may be living, and the sheriff or officer executing the process may accept the verbal or written promise of such person so notified, or of any other proper person, to be responsible for the presence of such child at the hearing of such case, or at any other time to which the same may be adjourned or continued by the court. In case such child shall fail to appear at such time or times as the court may require, the person or persons responsible for its appearance as herein pro-

vided for, unless in the opinion of the court there shall be reasonable cause for such child to fail to appear as herein provided for, may be proceeded against as in cases in contempt of court and punished accordingly; and where any such child shall have so failed to appear, any warrant, capias or alias capias issued in such case may be executed as in other cases; provided, however, that no child within the provisions of this Act shall be incarcerated in any compartment or a jail or lock-up in which persons over eighteen years of age are being kept or detained; and further provided, that it shall be the duty of the proper authorities of all counties with a population of over one hundred thousand to provide a suitable place for the detention of children coming under this Act, except and apart from any jail or lock-up in which older persons are incarcerated. Any such child shall also have the right to give bond or other security for its appearance at such trial of such case and the court may appoint counsel to appear and defend on behalf of such child. (Acts 1907, p. 138, sec. 4; Acts 1913, p. 215, ch. 112, sec. 6.)

Art. 1201. Courts always open for disposition of cases; proceedings not to be had in justice or police courts except to transfer causes to juvenile courts.—The county and district courts of the various counties of this State shall at all times be deemed in session for the purpose of disposing of cases under this Act and when any male child under seventeen years of age, or female child under eighteen years of age, is arrested on any charge, with or without warrant, such child, instead of being taken before a justice of the peace or any police court, shall be taken directly before the county or district court, or, if the child should be taken before a justice of the peace or a police court upon a complaint sworn out in such court or for any other reason, it shall be the duty of such justice of the peace or city judge to transfer the case to said county or district court, and in any such case the court may hear and proceed to dispose of the case in the same manner as if such child had been brought before the court upon information originally filed as herein provided. (Acts 1907, p. 139, sec. 5; Acts 1913, p. 216, ch. 112, sec. 7.)

Art. 1202. Probation officers; appointment, etc.—The County Courts of the Several Counties of this State shall have authority to appoint any number of discreet persons of good moral character to serve as probation officers during the pleasure of said court, said probation officers to receive no compensation from the County treasury except as herein provided. It shall be the duty of the Clerk of the court, if practicable, to notify the said probation officers when any child is to be brought before the court; it shall be the duty of such probation officer to make investigation of such case; to be present in court to represent the interest of the child when the case is heard; to furnish to such court such information and assistance as the court or judge may require, and to take charge of any child before and after the trial as may be directed by the court. The number of probation officers to receive compensation from the county, named and designated by the County court shall be as follows:

In Counties having a population of less than Seventy-five thousand, one probation officer may be appointed by the Commissioners Court when in their opinion such officer is needed, who shall receive a compensation of not to exceed twelve hundred dollars per annum, provided that in counties having a population of not less than thirty-five thousand and not more than seventy-five thousand and containing a city of more than twenty nine thousand population, one probation officer may be appointed by the Commissioners Court when in their opinion the services of such officer is needed, who shall receive a compensation of not to exceed twenty-four hundred dollars per annum. Expenses may be allowed such probation officers by the county in a sum not to exceed two hundred dollars per annum. The County Judge shall select such probation officers from a list of three furnished by a nominating committee composed of three members as follows: The County Superintendent of Public Instruction and the Superintendents or Principals of the two largest independent school districts in such county.

In counties having a population of more than seventy-five thousand, the county judge shall appoint not fewer than two probation officers from lists furnished him by the nominating committee as provided above. The Chief probation officer shall receive a salary of not to exceed twenty-four hundred dollars per annum, and necessary expenses not to exceed two hundred dollars per annum. Other probation officers shall receive salaries not to exceed fifteen hundred dollars per year, and all necessary expenses not to exceed two hundred dollars per year.

In the appointment of all probation officers under the provisions of this act, the county judge may upon the nomination of the committee of three herein above provided for, select for such office any school attendance officer or officers of the county or of school districts in the county that may be provided for in any compulsory school attendance law now in force in this state, or that may hereafter be passed, and the salary and expenses of such joint probation officer or officers and attendance officer or officers shall be paid jointly by the county and school authorities upon any basis of division they may agree upon.

Probation officers receiving a salary or other compensation from the county, provided for by this act, are hereby vested with all the power and authority of police or sheriffs to make arrests and perform any other duties ordinarily required by policemen and sheriffs which may be incident to their office or necessary or convenient to the performance of their duties; provided that other probation officers may be vested with like power and authority upon a written certificate from the county judge that they are persons of discretion and good character and that it is the desire of the court to vest them with all the power and authority conferred by law upon probation officers receiving compensation from the county.

Salaries or compensation of paid probation officers permitted by this act shall be fixed by the county commissioners not to exceed the sums herein mentioned, and in any bills for expenses not exceeding the sums herein provided for, shall be certified by the county

judge as being necessary in and about the performance of the duties of the probation officer or officers. It shall be the duty of the commissioners court of the county to provide the necessary funds for the payment of salaries and expenses of the probation officers provided for in this act. The appointment of probation officers as herein designated shall be filed in the office of the clerk of the County Court. Probation officers shall take an oath, such as may be required of other county officers, to perform their duties, and file it in the office of the clerk of the county court.

Nothing herein contained however shall be held to limit or abridge the power of the county judge to appoint any number of persons as probation officers. And upon a vote of the county commissioners court the county judge may appoint as many additional salaried probation officers as the court may direct. As a basis for the reckoning of the population of any county affected by this section of the last federal census shall be used. (Acts 1907, p. 139, sec. 6; Acts 1913, p. 216, ch. 112, sec. 8; Act 1919, ch. 91, sec. 1; Acts 1919, 2d C. S., ch. 51, sec. 1.)

Art. 1203. Commitment of delinquent to care of proper person, or institution or of probation officer; age limit; order of court; detention homes and parental schools; special tax; election.—In any case of "delinquent child" coming under the provisions of this law, the court may continue the hearing from time to time and may commit the child to the care of the probation officer or to the care or custody of any other proper person, and may allow said child to remain in its own home, subject to visitation of the probation officer or other person designated by the court, or under any other conditions that may seem proper and be imposed by the court; or the court may cause the child to be placed in the home of a suitable family, under such conditions as may be imposed by the court, or it may authorize the child to be boarded out in some suitable family, in case provision is made, by voluntary contribution or otherwise, for the payment of the board of such child until suitable provision may be made in a home without such payment; or the court may commit it to any institution in the county that may care for children that is willing to receive it, or which may be provided for by the State or county, suitable for the care of such children, willing to receive it, or of any State institution which may now or hereafter be established for boys or girls, willing to receive such child, or to any other institution in the State of Texas for the care of such children willing to receive it. In no case shall a child proceeded against under the provisions of this law be committed beyond the age of twenty-one. The order of the court committing such child to the care and custody of any person hereinbefore set out shall prescribe the length of time and the conditions of such commitment; and such order shall be at all times subject to change by further orders of the court with reference to said child; and the court shall have the power to change the custody of such child or to entirely discharge it from custody whenever, in the judgment of the court, it is to the best interest of the child to do so. Authority is hereby granted to all counties in this State to establish detention homes and parental schools for dependent delinquent juveniles, and it shall be lawful for the commissioners' court to appropriate from the general fund of the county such sum or sums as may be necessary to establish, equip and maintain such detention homes and parental schools, as may be necessary to care for the dependent and delinquent children of the county. In like manner any county in which no such detention home or parental school exists may appropriate such funds as may be necessary to pay for the board and for the proper care and training of its dependent and delinquent juveniles in the detention home or parental school of any county that may agree to receive them and at such rates of board and tuition as shall be agreed upon by the commissioners' courts of the counties concerned; provided, when, in the opinion of the commissioners' court, it is desirable to levy a special tax for establishing and maintaining such detention home or parental school, or for paying the board and tuition of dependent and delinquent children as herein provided the said court may bring the question of levying such special tax to a vote of the qualified voters of the county at a special election held for that purpose, and the said court must submit the said question to the voters when requested to do so by a petition signed by ten per cent of the qualified voters of the county. All elections held under the provisions of this section shall be governed in all respects not herein specified to the contrary by the laws of this State governing elections for the levy of special school taxes. (Acts 1907, p. 139, sec. 7; Acts 1913, p. 218, ch. 112, sec. 9.)

Art. 1204. Report to juvenile court by persons having custody of delinquent; responsibility of custodian.—The court or the judge thereof may, at any time, require any institution, association or person, to whose care any such child is committed, to make a complete report of the care, condition and progress of such child. And such court may also require of any institution or association receiving or desiring to receive children under the provisions of this law, such reports, information and statements as the court shall deem proper for its action; and the court shall in no case commit a child or children to any association or institution whose standing, conduct or care of the children or ability to care for children is not satisfactory to the court. (Acts 1907, p. 140, sec. 8; Acts 1913, p. 219, ch. 112, sec. 10.)

Art. 1205. [Repealed by Acts 1913, ch. 112, sec. 13.]

Art. 1206. Commitment of incorrigible boys to State Industrial School for Boys; petition by parent or guardian; expenses; discharge on nonpayment; conveyance to institution.—Any parent or guardian of any incorrigible boy, under the age of seventeen years, may present a petition to the judge of the juvenile court of the county of his residence, setting forth under oath the age and habits of any such boy and praying that said boy be committed to the State Industrial School for Boys. The court shall set the case down for hearing and shall take testimony, and if, in his judgment, the child should be committed, said judge may enter an order committing said child to said institution; provided, that the parent or guardian

shall pay all necessary expenses of carrying said child to said institution and in addition shall pay at least one quarter in advance, the amount necessary for the maintenance of said child at said institution, as estimated by the Superintendent of said institution. Said parent or guardian shall also deposit with the Superintendent of said institution an amount sufficient to pay the fare of said child from said institution to its home; and, in event said parent or guardian shall fail or refuse to make any subsequent quarterly payment for maintenance, in advance, said commitment shall terminate; and the Superintendent of said school shall discharge such boy and return him to his home.

The expense of conveying all boys committed to said school shall be paid by the county from which said commitment is made; and it shall be the duty of the sheriff, probation or any peace officer, as the court may direct, to convey all boys committed to said institution to the said State Industrial School for Boys; provided, that the court may send the boy to the school without escort, if he deem it prudent. (Acts 1913, p. 219, ch. 112, sec. 11; Acts 1909, p. 101, amending Acts 1907, p. 137, sec. 9.)

Art. 1207. Construction of Act; expenses how paid.—This Act shall be liberally construed, to the end that its purposes may be carried out; that is, that the interests of the child and its restoration to society shall at all times be the object in view of proceeding against it; provided, that no costs or expenses incurred in the enforcement of this Act shall be paid by the State. (Act 1907, p. 137, sec. 10; Acts 1913, p. 219, ch. 112, sec. 12.)

GIRLS' TRAINING SCHOOL

Art. 1207a. Dependent or delinquent girls may be committed by juvenile court, etc.; mentally deficient or diseased girls; examination.—Whenever any girl between the ages of seven and eighteen years shall be brought before any juvenile court upon petition of any person in this state or the humane society or any institution of a similar purpose or character, charged with being a dependent or delinquent child as these terms are defined in the statutes of this state, the court may, if in the opinion of the judge, the girls' training school is the proper place for her, commit such girl to said girls' training school during her minority; provided, that no girl shall be committed to the girls' training school who is feeble-minded, epileptic or insane, and that any girl committed to said girls' training school who is afflicted with a venereal, tubercular or other communicable disease, shall be assigned to a distinct and separate building of the institution and shall not be allowed to associate with the other wards until cured of said disease or diseases.

No girl shall be admitted to the institution until she has been examined by the training school physician, and such physician issuing a certificate showing her exact state or condition in reference to said qualifications hereinabove enumerated. (Acts 1913, p. 289, sec. 5.)

This article, and article 1207b, are duplicated in the Civil Statutes, as arts. 2201a, 2201b. For sections 1-4, 7, 8, 10, 11 of this act see ante, Civ. St. arts. 5234a-5234h.

Art. 1207b. Duties of court; transcript; conveyance to school, etc.—It shall be the duty of the court committing any girl to the girls' training school, in addition to the commitment, to annex a carefully prepared transcript of the trial to aid the officials of the institution in better understanding and classifying the girl. The court shall also designate some reputable woman to convey the girl to the institution. The cost of conveying any girl committed to this institution shall be paid by the county from which she is committed, provided that no compensation shall be allowed beyond the actual and necessary expenses of the party conveying and the girl conveyed. (Id. sec. 6.)

DELINQUENT SCHOOL CHILDREN

Art. 1207c. Incorrigible pupils to be proceeded against in juvenile court; parole of child; bond to secure good behavior; report by school officers and teachers; violation of parole; commitment to training school.—Any child within the compulsory school attendance ages who shall be insubordinate, disorderly, vicious or immoral in conduct, or who persistently violates the reasonable rules and regulations of the school which he attends, or who otherwise persistently misbehaves therein so as to render himself an incorrigible, shall be reported to the person exercising the duties of attendance officer of said school, who shall proceed against such child in the juvenile court as herein provided [art. 1513g, Penal Code]. If such child is found guilty upon a charge or charges made against him in said court, the judge of said court shall have the power to parole said child, after requiring the parent or other person standing in parental relation, to execute a bond in the sum of not less than ten dollars, conditioned that said child shall attend school regularly and comply with all the rules and regulations of said school. If the Superintendent or principal of any school shall report to the school attendance officer acting for said school that said child has violated the conditions of his parole, said attendance officer shall proceed against such child before the judge of the juvenile court, as in the first case herein mentioned, and if said child shall be found guilty of violating the conditions of said parole, the bond provided for herein shall forthwith be declared forfeited, and shall be collected in the same manner as other forfeited bonds under the general laws of this State, and the proceeds of same paid into the available school fund of the common school district or the independent school district, as the case may be; and the judge of said court shall have the power in his discretion, after a fair and impartial hearing given to said child, to parole said child again, requiring such bond as he may deem prudent, and require said child to again enter school. If said child shall violate the conditions of the second parole and shall be convicted of same, he shall be committed to a suitable training school as may be agreed upon by the parent of the child and the judge of the juvenile court in which the child is convicted. (Acts 1915, p. 97, ch. 49, sec. 9.)

Art. 1207d. Repeal and partial invalidity.—All laws and parts of laws in conflict with this Act are hereby repealed, and

in case it is declared by the courts that any section or provision of this Act is unconstitutional, such decision shall not impair other sections or provisions of this Act. (Id. sec. 10.)

COUNTY JUVENILE BOARDS

Art. 1207e. Board for certain counties created.—In any county of this State having a population of one hundred thousand, or over, and containing a city having a population of seventy thousand, or over, according to the United States census of 1910, the judges of the several district courts of such county, together with the county judge of such county, are hereby constituted a juvenile board for such county. (Acts 1917, ch. 16, sec. 1; Acts 1917, ch. 58, sec. 1.)

Art. 1207f. Appointment of probation officers; salary; duties of probation officers.—Said board shall have authority to appoint one or more, not exceeding six, discreet persons of good moral character to serve as probation officers during the pleasure of said board. Such officers shall be paid such salary per month as said board may recommend and the commissioners' court of such county may authorize, not to exceed $100 per month. Such probation officer shall have authority, and it shall be his duty, to make investigation of all cases referred to him as such by such board, to be present in court, and to represent the interests of the child when the case is heard, and to furnish to the court and such board such information and assistance as such board may require, and to take charge of any child before and after the trial, and to perform such other services for the child as may be required by the court or said board. (Acts 1917, ch. 16, sec. 2.)

Art. 1207g. Sessions of board; recommendations to juvenile courts and pardoning power.—Such board shall hold regular or special meetings in accordance with the rules which it may prescribe, and at intervals of not less than once in every three months, and shall keep such records as it desires, and shall hear and consider such facts as may be brought to its attention, under such rules as it may prescribe, concerning the welfare of any child in such county or under the jurisdiction of any of its courts, and in the event such child has been adjudged to be dependent, neglected or delinquent, by any of the courts of such county, it may make to the court or person having custody of such child, or if such child has been adjudged guilty of any crime, then to the Board of Pardons and Governor, such recommendation in writing as it may think proper concerning the care and custody of such child. (Id. sec. 3.)

Art. 1207h. Powers of board.—Such board shall neither have nor exercise judicial power nor function; but in the event such board desires to make inquiry as to whether any child should be adjudged either dependent, neglected or delinquent, it shall have power to direct one of the probation officers of said board to file complaint against such child in some one of the courts of such county having jurisdiction to hear and determine such complaint, and such board or the members thereof may be present at such hearing, either in person or by one or more of its probation officers, and make such inquiry concerning such child as may be proper under the established rules of procedure in such court. (Id. sec. 4.)

Art. 1207i. Salary of members of board.—Hereafter the annual salary of each of the judges of the civil and criminal district courts of such county shall be $1,500 in addition to that paid the other district judges of the State, said additional salary of $1,500 to be paid monthly out of the general funds of such county, upon the order of the commissioners' court. (Id. sec. 5.)

LIST OF ACTS, PASSED SUBSEQUENT TO THE REVISION OF 1895, OMITTED FROM THE REVISED CODE OF CRIMINAL PROCEDURE OF 1911, AND INCLUDED IN THIS COMPILATION IN ACCORDANCE WITH THE EXPLANATION GIVEN IN THE PREFACE IN THE FRONT OF THIS BOOK

Date of Law.	Chap.	Sec.	Article in this Compilation.	Subject of Act.
1895	115	1	1163a	County's Liability for Costs.
	(Sen. Jour. No. 97, p. 484; Rev. St. 1911, Art. 7133)		1105a	Requiring List of Fugitives to be Sent to Adjutant General.
1897 (S. S.)	5	1, 7	1117h, 1127a	Fees of Office.
	12	1	618, 618a	Designation of Special Judge in Cases in which District Judge is Disqualified.
1899	33		109a–109g, 920a, 968b–968h, 968j, 1177a	Creation of Corporation Court.
1903	25		844a	Time for Filing Statement of Facts.
1905	14		661a	Summoning Jurors in Capital Cases.
	48	1–3	1057r–1057t	Appointment of Pardon Advisers.
	104	70	291a	Persons Belonging to Active Militia Exempt from Arrest on any Civil Process while going to or Returning from Military Duty.
	104	73	264a	Powers of Commanding Officer in Relation to Trespassing upon Camp Grounds, etc., or Sale of Intoxicating Liquors.
	104	132	26a	No Action or Proceeding may be Prosecuted against a Member of the Military Force of State in Certain Cases.
	104	133	632a	Officer or Member of Military Force shall have Power to Change Venue in Certain Cases.
1907	19	1	646	Presence of Accused at Trial.

ACTS PASSED PRIOR TO THE REVISION OF THE CODE OF CRIMINAL PROCEDURE IN 1895, AND OMITTED FROM THAT CODE, BUT REVIVED BY INCLUSION IN THE REVISED CIVIL STATUTES

Date of Law.	Civil Statutes.	Art. in This Compilation.	Subject of Act.
1875 (2d S. S.) p. 113, § 19	Rev. St. 1911, Art. 908	968a	Right of Trial by Jury before Mayor or Recorder.
1875, p. 256, § 133	Id. Art. 919	968i	Forfeiture of Peace Bonds in Mayors' and Recorders' Courts.
1893, p. 118	Id. Arts. 2229–2235	97a–97ee	Creating Criminal District Court of Dallas County.

TABLE OF SESSION LAWS

(CODE OF CRIMINAL PROCEDURE)

1911-1919

Showing the articles of the Code of Criminal Procedure under which the various acts applicable to such Code still in force will be found. Where particular acts or sections of acts are not found in this table, it is because they have been expressly repealed, superseded by later acts relating to the same subject, or that they relate to matters embraced within the Civil Statutes or Penal Code, or because they make appropriations, or consist of emergency or repeal provisions, or because they are purely local in their operation, and have not therefore been carried into the compilation.

LAWS	Articles
1911	
Ch. 43, § 1	1057a
§ 2	1057b
§ 3	1057c
§ 4	1057d
§ 5	1057g
§ 6	1057h
§ 7	1057i
§ 8	1057j
§ 9	1057k
§ 10	1057*l*
§ 11	1057m
§ 15	1057*o*
Ch. 44	865b
Ch. 64, § 1	1142
Ch. 66, § 1	1158, 1160
Ch. 67, § 1	97m
§ 2	97mm
§ 3	97n
§ 4	97nn
§ 5	97nnn
§ 6	97*o*
§ 7	97*oo*
§ 8	97p
§ 9	97pp
§ 10	645a
§ 11	97ppp
§ 12	97q
§ 13	97qq
§ 14	97r
§ 15	97rr, 895a
§ 16	97rrr
§ 17	97s
§ 17a	97ss
§ 18	97sss
§ 19	97t
§ 20	97tt
§ 21	97ttt
§ 22	97u
§ 23	97uu
§ 24	97v
Ch. 82, § 1	664
Ch. 119, § 4	844aa
§ 5	844b
§ 6	844c
§ 7	845
§ 8	845a
§ 9	845b
§ 13	845c
§ 14	846
1911	
Local and Special Laws	
Ch. 104, § 1	1041/4
§ 2	1041/4a
§ 3	1041/4b
§ 4	1041/4c
§ 5	1041/4d
§ 6	1041/4e
§ 7	1041/4f
§ 8	1041/4g
§ 9	1041/4h
§ 10	1041/4i
§ 11	1041/4j
§ 12	1041/4k

LAWS 1911—Cont'd	Articles
First Called Session	
Ch. 19, § 1	97f
§ 2	97ff
§ 3	97g
§ 4	97gg
§ 5	97h
§ 6	97hh
1913	
Ch. 7, § 1	865b
§ 2	865c
§ 3	865d
§ 4	865e
§ 5	865f
§ 6	865g
§ 7	865h
§ 8	865i
Ch. 8, § 1	104s
§ 2	104ss
§ 3	104sss
§ 4	104ssss
§ 5	104t
§ 6	104tt
§ 7	104ttt
Ch. 89, § 1	97i
Ch. 112, § 1	1195
§ 2	1196
§ 3	1197
§ 4	1198
§ 5	1199
§ 6	1200
§ 7	1201
§ 8	1202
§ 9	1203
§ 10	1204
§ 11	1206
§ 12	1207
Ch. 132, § 1	865a
§ 2	1057a
§ 5	1057n
§ 6	1057*o*
Ch. 138, § 1	735
§ 2	737
§ 3	737a
§ 4	743
Ch. 144, § 5	1207a
§ 6	1207b
Ch. 150, § 1	526a
§ 3	1137a
§ 4	1137b
1913	
First Called Session	
Ch. 5, § 1	865a
§ 2	1057a
§ 3	1057b
§ 4	1057d
§ 5	1057e
§ 6	1057f
§ 7	1057n
§ 8	1057*o*
§ 9	1057p
§ 10	1057r
Ch. 13, § 1	1137b

LAWS	Articles
1915	
Ch. 14, § 1	97u
Ch. 17, § 3	97zz
§ 4	97vv to 97z, 97zzz
Ch. 29, § 1	104yyy
§ 2	104z
§ 3	104zz
§ 6	40a
§ 10	104zzz
Ch. 37, § 1	97ii
§ 2	97j
§ 3	97jj
§ 4	97jjj
§ 5	97k
§ 7	97kk
§ 7a	97*l*
Ch. 39, § 1	104f
§ 2	104g
§ 3	104h
§ 4	104i
§ 5	104j
§ 6	104k
§ 7	104*l*
§ 8	104m
§ 9	104n
§ 10	104*o*
§ 11	104p
§ 12	1155a
§ 13	104q
§ 14	104r
Ch. 45	618
Ch. 49, § 9	1207c
§ 10	1207d
Ch. 86, § 1	97*ll*
Ch. 104, § 1	915
Ch. 127, § 1	1117b
1915	
First Called Session	
Ch. 8, § 1	104u
§ 2	104uu
§ 3	104uuu
§ 4	104uuuu
§ 5	104v
§ 6	104vv
§ 7	104vvv
§ 8	104vvvv
§ 9	104w
§ 10	104ww
§ 11	104www
§ 12	104x
§ 13	104xx
§ 14	104xxx
§ 15	104y
§ 16	104yy
Ch. 20, § 1	1143
1917	
Ch. 16, § 1	1207e
§ 2	1207f
§ 3	1207g
§ 4	1207h
§ 5	1207i

INDEX

TO

CODE OF CRIMINAL PROCEDURE

References are to articles, except where otherwise indicated.

[References are to articles, except where otherwise indicated.]

[References are to articles, except where otherwise indicated.]

[References are to articles, except where otherwise indicated.]

[References are to articles, except where otherwise indicated.]

[References are to articles, except where otherwise indicated.]

[References are to articles, except where otherwise indicated.]

[References are to articles, except where otherwise indicated.]

[References are to articles, except where otherwise indicated.]

[References are to articles, except where otherwise indicated.]

[References are to articles, except where otherwise indicated.]

[References are to articles, except where otherwise indicated.]

[References are to articles, except where otherwise indicated.]

[References are to articles, except where otherwise indicated.]

[References are to articles, except where otherwise indicated.]

[References are to articles, except where otherwise indicated.]

[References are to articles, except where otherwise indicated.]

[References are to articles, except where otherwise indicated.]

[References are to articles, except where otherwise indicated.]

[References are to articles, except where otherwise indicated.]

[References are to articles, except where otherwise indicated.]

[References are to articles, except where otherwise indicated.]

[References are to articles, except where otherwise indicated.]

[References are to articles, except where otherwise indicated.]

[References are to articles, except where otherwise indicated.]

[END OF VOLUME]