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1895
CODE OF CRIMINAL PROCEDURE
OF THE
STATE OF TEXAS

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THE CODE

OF

CRIMINAL PROCEDURE

OF THE

STATE OF TEXAS.

ADOPTED AT THE REGULAR SESSION OF THE TWENTY-FOURTH LEGISLATURE,

1895.

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Sec. 2. BE IT FURTHER ENACTED, That the following articles shall hereafter constitute the CODE OF CRIMINAL PROCEDURE of the State of Texas, to-wit:

THE CODE

OF

CRIMINAL PROCEDURE

TITLE I.

Introductory.

CHAPTER ONE.

CONTAINING GENERAL PROVISIONS.

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Objects of this Code. O. C. 1. (Amended by Act Feb. 15, 1858.)

Article 1. [1] 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.

Same subject. O. C. 2.

Art. 2. [2] 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.

Trial by due course of law. (Bill of Rights, §19.) O. C. 3.

Art. 3. [3] 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.

Rights of accused persons. (Bill of Rights, §10.) O. C. 4.

Art. 4. [4] 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.

Protection against searches and seizures. (Bill of Rights, §9.) O. C. 5.

Art. 5. [5] 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.

Prisoners entitled to bail, except in certain cases. (Bill of Rights, §11.) O. C. 6.

Art. 6. [6] 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.

Writ of habeas corpus shall never be suspended. (Bill of Rights, §12.) O. C. 7.

Art. 7. [7] The writ of habeas corpus is a writ of right, and shall never be suspended.

Excessive bails, fines, etc., forbidden. (Bill of Rights, §18.) O. C. 8.

Art. 8. [8] 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.

No person shall be twice put in jeopardy for the same offense. (Bill of Rights, §14.) O. C. 9.

Art. 9. [9] 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.

Trial by jury shall remain inviolate. (Bill of Rights.) O. C. 10.

Art. 10. [10] The right of trial by jury shall remain inviolate.

Liberty of speech and of the press. (Bill of Rights, §8.) O. C. 11.

Art. 11. [11] 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.

Person shall not be disqualified as a witness for religious opinion, or want of religious belief. (Bill of Rights, §5.)

Art. 12. [12] 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.

Outlawry and transportation prohibited. (Bill of Rights, §20.)

Art. 13. [13] No citizen shall be outlawed, nor shall any person be transported out of the state for any offense committed within the same.

Conviction shall not work corruption of blood, etc. (Bill of Rights, §21.)

Art. 14. [14] No conviction shall work corruption of blood or forfeiture of estate.

No conviction of treason, except, etc. (Bill of Rights, §22.)

Art. 15. [15] 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.

Privilege of senators and representatives. (Const., art. 3, §14.) O. C. 12.

Art. 16. [16] 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.

Privilege of voters. (Const., art. 6, §5.) O. C. 11.

Art. 17. [17] 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.

Change of venue. (Const., art. 3, §45.)

Art. 18. [18] 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.

Conservators of the peace; style of process. (Const., art. 5, §12.) O. C. 15.

Art. 19. [19] All judges of the supreme court, courts of appeals and district courts, shall, by virtue of their offices, be convervators 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."

In what cases accused may be tried, etc., after conviction. O. C. 20.

Art. 20. [21] 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.

No conviction of felony, except by verdict of jury. O. C. 22.

Art. 21. [22] No person can be convicted of a felony except upon the verdict of a jury duly rendered and recorded.

Defendant may waive any right, except, etc. O. C. 26.

Art. 22. [23] 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.

Trial shall be public. O. C. 23.

Art. 23. [24] The proceedings and trials in all courts shall be public.

Defendant shall be confronted by witnesses, except. O. C. 24.

Art. 24. [25] 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.

Construction of this Code. O. C. 25.

Art. 25. [26] 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.

When rules of common law shall govern. O. C. 27.

Art. 26. [27] 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.

CHAPTER TWO.

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

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I. THE ATTORNEY GENERAL.

Attorney-general shall represent the state. O. C. 28.

Article 27. [28] 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.

Shall report to governor biennially. (Act May 11, 1846, p. 206, amended by Act March 28, 1885, pp. 61-62.)

Art. 28. [29] 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.

May require certain officers to report to him. O. C. 944. (Amended by Act March 28, 1885, p. 62.)

Art. 29. [30] 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.

II. DISTRICT AND COUNTY ATTORNEYS.

Duties of district attorneys. O. C. 30.

Art. 30. [31] 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.

Same subject. O. C. 31.

Art. 31. [32] 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.

Duties of county attorneys.

Art. 32. [33] 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.

Duty to present officer for neglect of duty. (Act Aug. 7, 1876, p. 86.)

Art. 33. [34] 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.

Shall hear complaints, and what the same shall contain. Ib. p. 87, §13.

Art. 34. [35] 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.

Duty when complaint has been made. Ib. §15.

Art. 35. [36] 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.

May administer oaths. Ib. §14.

Art. 36. [37] For the purpose mentioned in the two preceding articles, district and county attorneys are authorized to administer oaths.

Shall not dismiss case, unless. Ib. p. 88, §20.

Art. 37. [38] 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.

Attorney pro tem. may be appointed. Ib. p. 87, §12.

Art. 38. [39] 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.

Shall report to attorney-general when required.

Art. 39. [40] 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.

Shall not be of counsel adverse to the state. O. C. 30.

Art. 40. [41] 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.

III. MAGISTRATES.

Who are magistrates. O. C. 52.

Art. 41. [42] 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.

Duty of magistrates. O. C. 32.

Art. 42. [43] 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.

IV. PEACE OFFICERS.

Who are peace officers. O. C. 53.

Art. 43. [44] 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.

Duties and powers of peace officers. O. C. 34.

Art. 44. [45] 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.

May summon aid when resisted. O. C. 44.

Art. 45. [46] 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.

Person refusing to obey liable to prosecution. O. C. 45.

Art. 46. [47] 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.

Officer neglecting to execute process may be fined for contempt. (Act Feb. 11, 1860.)

Art. 47. [48] If any sheriff or other officer shall willfully refuse or fail from neglect to execute any summons, subpoena 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.

V. SHERIFFS.

Shall be conservator of the peace and arrest offenders. (Act May 12, 1846, p. 265.) P. D. 5115.

Art. 48. [49] 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.

Keeper of jail. O. C. 37.

Art. 49. [50] Each sheriff is the keeper of the jail of his county, and responsible for the safe keeping of all prisoners committed to his custody.

Shall place in jail every person committed by lawful authority. O. C. 38.

Art. 50. [51] 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.

Shall notify district and county attorneys of prisoners, etc. O. C. 39.

Art. 51. [52] 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.

May appoint a jailer, who shall be responsible. O. C. 40.

Art. 52. [53] 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 prisoners, and liable to punishment as provided by law for negligently or willfully permitting a rescue or escape. But the sheriff shall, in all cases, exercise a supervision and control over the jail.

May rent room and employ guard, when. O. C. 43.

Art. 53. [54] 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.

Deputy may perform duties of sheriff. O. C. 46.

Art. 54. [55] 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.

VI. CLERKS OF THE DISTRICT AND COUNTY COURTS.

Shall file all papers, issue process, etc. O. C. 47.

Art. 55. [56] 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 willful failure to perform any such duties renders them liable to prosecution for an offense, in accordance with the provisions of the Penal Code.

Power of deputy clerks. O. C. 48.

Art. 56. [57] Whenever a duty is imposed upon the clerk of the district or county court the same may be lawfully performed by his deputy.

Shall report to attorney-general.

Art. 57. [58] 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.

CHAPTER THREE.

CONTAINING DEFINITIONS.

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Words and phrases, how understood. O. C. 49.

Article 58. [59] 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.

Same subject. O. C. 50.

Art. 59. [60] 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.

Criminal action, how prosecuted. O. C. 51.

Art. 60. [61] 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.

"Officers," includes what. O. C. 54.

Art. 61. [62] The general term "officers" includes both magistrates and peace officers.

"Examining court" defined. O. C. 55.

Art. 62. [63] When the magistrate sits for the purpose of inquiring into a criminal accusation against any person, this is called an "examining court."

TITLE II.

Of the Jurisdiction of Courts in Criminal Actions.

CHAPTER ONE.

WHAT COURTS HAVE CRIMINAL JURISDICTION.

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Article 63. [64] The following courts have jurisdiction in criminal actions:

1. The court of criminal appeals.
2. The district courts.
3. The county courts.
4. The justices' courts, and the mayors' and other courts of incorporated cities or towns.

What courts have criminal jurisdiction. (Const., art. 5, §6.) O. C. 57.

CHAPTER TWO.

OF THE COURT OF CRIMINAL APPEALS.

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Article 64. 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.

Court to consist of three judges, their qualifications, salaries. (Act 22d Leg., S. S., ch. 16.)

Art. 65. 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.

Election of judges; term of office. Ib.

Art. 66. 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

Classification of judges. Ib.

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.

Vacancies, how filled. Ib.

Art. 67. 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.

Appellate jurisdiction. Ib.

Art. 68. Said court shall have appellate jurisdiction coextensive 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.

Power to issue writs. Ib.

Art. 69. 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.

Power to ascertain facts. Ib.

Art. 70. 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.

Presiding judge; process, how tested. Ib.

Art. 71. 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.

When judge is disqualified. Ib.

Art. 72. 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.

Terms of court. Ib.

Art. 73. Said court shall hold its terms as follows:

A term of court shall be held in the city of Tyler, in Smith county, which shall begin on the first Monday in October in each year, and may continue until the last day of December thereafter, unless the business before it is sooner disposed of.

A term of said court shall be held in the city of Dallas, in Dallas county, which shall begin on the first Monday in January in each year, and may continue until the last day of March thereafter, unless the business before it is sooner disposed of.

A term of said court shall be held in the city of Austin, in Travis county, which shall begin on the first Monday in April in each year, and may continue until the last day of June thereafter, unless the business before it is sooner disposed of.

Appeals. Ib.

Art. 74. Appeals from the several counties shall be returnable to such terms of said court as shall be determined by said court, under the rules thereof; provided, that appeals from the several counties in the supreme judicial district in which Austin is situated shall be returnable to the term of the court of criminal appeals held in said city.

Clerks to be appointed.

Art. 75. Said court shall appoint a clerk for each place at which it may sit, who shall hold his office for four years unless sooner removed by the court for good cause, entered of record in the minutes of said court.

Art. 76. Said clerks shall, before entering upon the duties of their offices, take and subscribe the oath of office prescribed by the constitution, and shall give the same bond, to be approved by the court of criminal appeals, as is now or may be hereafter required by them, of clerks of the supreme court. Oath and bond of clerk. Ib.

Art. 77. Said clerks shall perform as clerks of the court of criminal appeals the like duties as are now or may hereafter be required by law of the clerks of the supreme court, and shall be subject to the same liabilities as are now or may hereafter be prescribed for the clerks of the supreme court. Duties of clerks. Ib.

Art. 78. Said clerks may appoint deputies who shall perform all the duties of said clerks, and who shall be responsible to said clerks for the faithful discharge of the duties of their offices. Deputy clerks. Ib.

Art. 79. It shall be the duty of the court of criminal appeals to procure a seal for said court at each place at which it may hold its sessions, said seals to be of the same size and design, and have a star with five points, with the words "Court of Criminal Appeals of Texas" engraved on each of them. Seal of court. Ib.

Art. 80. 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 courts 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. Court reporter and reports. Ib.

Art. 81. As soon as the opinions are recorded, the originals, together with the records and papers in each case to be reported, shall be delivered to the reporter by the clerks of said court, who shall take the reporter's receipt for the same, but the reporter shall return to said clerks the said opinions, records and papers when he shall have finished using them. Reporter to return opinions. Ib.

Art. 82. All criminal cases pending in the court of appeals when this act takes effect shall be transferred to the court of criminal appeals to be determined by said court as provided by law. All civil cases pending in the court of appeals when this act takes effect shall be transferred to the court of civil appeals having jurisdiction of the same, and it shall be the duty of the clerks of the court of criminal appeals to transmit the original papers and certified copies of orders of the court made in each of said cases, to the court of civil appeals to which the same is transferred. Transfer of cases from court of appeals. Ib.

Art. 83. 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. Mandate. Ib.

Art. 84. 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 Writ of habeas corpus. Ib

discharge the person imprisoned or detained, as the law and the nature of the case may require.

Appellate jurisdiction. Ib.

Art. 85. The court of criminal appeals shall have appellate jurisdiction coextensive with the limits of the state in all criminal cases of whatever grade.

Article 85 construed. Ib.

Art. 86. 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.

CHAPTER THREE.

OF THE DISTRICT COURTS.

	Article		Article
Has exclusive jurisdiction of felonies	87	Misdemeanors involving official misconduct	89
Shall determine grades of the offense	88	Power to issue writs of habeas corpus	90

Has exclusive jurisdiction of felonies. (Const., art. 5, §8.)

Article 87. [68] The district courts shall have exclusive original jurisdiction in criminal cases of the grade of felony.

Shall determine grades of offenses. (Act June 16, 1876, p. 18, §3.)

Art. 88. [69] 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.

Misdemeanors involving official misconduct. (Const., art. 5, §8.)

Art. 89. [70] The district court shall have exclusive original jurisdiction in cases of misdemeanor involving official misconduct.

Power to issue writs of habeas corpus. (Const., art. 5, §8.)

Art. 90. [71] 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.

CHAPTER FOUR.

OF COUNTY COURTS.

	Article		Article
Have exclusive jurisdiction of misdemeanors, except, etc.	91	Power to issue writs of habeas corpus	93
Power to forfeit bail bonds, etc.	92	Appellate jurisdiction	94
		Appeal, etc., to district court, when	95

Have exclusive jurisdiction of misdemeanors, except, etc. (Const., art. 5, §16; Act June 16, 1876, p. 13, §3.)

Article 91. [72] 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.

Power to forfeit bail bonds. (Act June 16, 1876, p. 18, §3.)

Art. 92. [73] 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.

Power to issue writs of habeas corpus. (Const., art. 5, §16; Act June 16, 1876, p. 19, §5.)

Art. 93. [74] 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.

Art. 94. [75] The county courts shall have appellate jurisdiction in criminal cases of which justices of the peace and other inferior tribunals have original jurisdiction.

Appellate jurisdiction. (Const., art. 5, §16; Act June 16, 1876, p. 18, §3.)

Art. 95. [75a] 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.

Appeal, etc., to district court, when. (Act April 21, 1879, p. 125.)

CHAPTER FIVE.

OF JUSTICES' AND OTHER INFERIOR COURTS.

	Article		Article
Original concurrent jurisdiction	96	Mayors' and other inferior courts	98
Power to forfeit bail bonds	97	May sit at any time to try causes	99

Article 96. [76] 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.

Original concurrent jurisdiction. (Const., art. 5, §19; Act Aug. 17, 1876, p. 155, §3.)

Art. 97. [77] 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.

Power to forfeit bail bonds. (Act Aug. 17, 1876, p. 155, §3.)

Art. 98. [78] 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.

Mayors' and other inferior courts. O. C. 65.

Art. 99. [79] Justices of the peace, mayors and recorders may sit at any time to try criminal causes over which they have jurisdiction.

May sit at any time to try causes. O. C. 65.

TITLE III.

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.

	Article		Article
May be prevented, how	100	Same subject	104
Rules as to prevention of by resistance	101	When other person, etc., may prevent	105
Same subject	102	Same rules shall govern in such cases as, etc.	106
Resistance may be in proportion to, etc.	103		

May be prevented, how. O. C. 66.

Article 100. [80] 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.

Rules as to prevention of by resistance. O. C. 67.

Art. 101. [81] 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."

Same subject. O. C. 68.

Art. 102. [82] 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.

Resistance may be in proportion to, etc. O. C. 69.

Art. 103. [83] 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.

Same subject. O. C. 70.

Art. 104. [84] 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.

When other person, etc., may prevent. O. C. 71.

Art. 105. [85] Any person other than the party about to be injured may also, by the use of necessary means, prevent the commission of the offense.

Same rules shall govern in such case, as, etc. O. C. 72.

Art. 106. [86] 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.

CHAPTER TWO.

OF PREVENTING OFFENSES BY THE ACT OF MAGISTRATES AND OTHER OFFICERS.

	Article		Article
Duty of magistrate to prevent	107	Duty of peace officer to prevent	111
Same subject	108	Same subject	112
Same subject	109	Conduct of, etc., how regulated	113
May compel offender to give security	110		

Duty of magistrate to prevent. O. C. 73.

Article 107. [87] 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.

Same subject. O. C. 74.

Art. 108. [88] 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.

Same subject. O. C. 75.

Art. 109. [89] 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.

May compel offender to give security. O. C. 76.

Art. 110. [90] 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.

Duty of peace officer to prevent. O. C. 77.

Art. 111. [91] 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.

Same subject. O. C. 92.

Art. 112. [92] 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 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.

Conduct of, etc., how regulated. O. C. 79.

Art. 113. [93] 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.

CHAPTER THREE.

PROCEEDINGS BEFORE MAGISTRATES FOR THE PURPOSE OF PREVENTING OFFENSES.

	Article
Magistrate shall issue warrant to prevent, when	114
Proceedings when accused is brought before magistrate	115
What shall be a sufficient peace bond	116
Oath required of surety and bond to be filed, etc	117
Amount of bail, how fixed	118
How surety may exonerate himself	119
Defendant failing or refusing to give bond shall be committed	120
Defendant shall be discharged, when	121
May discharge defendant, when	122
May require bond of person charged with libel	123
Where defendant has committed a crime	124
Accused shall pay costs, when	125
May direct that person or property threatened shall be protected	126
Suit on bond	127
Same subject	128

Magistrate shall issue warrant to prevent, when. O. C. 80.

Article 114. [94] 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.

Proceedings when accused is brought before a magistrate. O. C. 81.

Art. 115. [95] 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.

What shall be a sufficient peace bond. O. C. 84.

Art. 116. [96] 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.

Oath required of surety, and bond to be filed. O. C. 90.

Art. 117. [97] 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.

Amount of bail, how fixed. O. C. 90.

Art. 118. [98] 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.

How surety may exonerate himself. O. C. 89.

Art. 119. [99]* 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 proceedings 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.

Art. 120. [100] 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. Defendant failing or refusing to give bond shall be committed. O. C. 82.

Art. 121. [101] 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. Defendant shall be discharged, when. O. C. 86.

Art. 122. [102] 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. May discharge defendant, when. O. C. 85.

Art. 123. [103] 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. May require bond of person charged with libel. O. C. 95.

Art. 124. [104] 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. When defendant has committed a crime. O. C. 91.

Art. 125. [105] 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. Accused shall pay costs, when. O. C. 95.

Art. 126. [106] 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. May direct that person or property threatened shall be protected. O. C. 92.

Art. 127. [107] 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. Suit on bond. O. C. 87.

Art. 128. [108] 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. Same subject. O. C. 88.

CHAPTER FOUR.

OF THE SUPPRESSION OF RIOTS, UNLAWFUL ASSEMBLIES AND OTHER DISTURBANCES.

	Article		Article
Officer may require aid of citizens and military, when	129	Officer may call posse comitatus	133
Governor may order military to aid in executing process	130	What means may be adopted to suppress, etc.	134
Conduct of military in suppressing riots.	131	Unlawful assembly	135
Duty of magistrates and peace officers to suppress, etc	132	Suppression of riot, unlawful assembly, etc., at election	136
		Power of special constables in such cases	137

Officer may require aid of citizens and military when he apprehends resistance. O. C. 95.

Article 129. [109] 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.

Governor may order military to aid in executing process. O. C. 98.

Art. 130. [110] 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.

Conduct of military in suppressing riots. O. C. 104.

Art. 131. [111] 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.

Duty of magistrates and peace officers to suppress, etc. O. C. 99.

Art. 132. [112] 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.

Officer may call to his aid the power of the county. O. C. 100.

Art. 133. [113] 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.

What means may be adopted to suppress. O. C. 102.

Art. 134. [114] 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.

Unlawful assembly. O. C. 103.

Art. 135. [115] 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.

Suppression of riot, unlawful assembly, etc., at election. O. C. 106.

Art. 136. [116] 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.

Art. 137. [117] 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. Power of special constable in such cases. O. C. 117.

CHAPTER FIVE.

OF SUPPRESSION OF OFFENSES INJURIOUS TO PUBLIC HEALTH.

	Article		Article
Court may restrain a person from carrying on a trade, etc., injurious to public health	138	Requisites of bond	140
Proceeding when party refuses to give bond	139	Suit on bond	141
		Same subject	142
		Unwholesome food, etc., may be seized and destroyed	143

Article 138. [118] 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. Court may restrain a person from carrying on a trade, etc. O. C. 108.

Art. 139. [119] 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. Proceeding when party refuses to give bond. O. C. 108.

Art. 140. [120] 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. Requisites of bond. O. C. 109.

Art. 141. [121] 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. Suit upon bond. O. C. 109.

Art. 142. [122] 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. Same subject. O. C. 110.

Unwholesome food, etc., may be seized and destroyed. O. C. 108.

Art. 143. [123] 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.

CHAPTER SIX.

OF THE SUPPRESSION OF OBSTRUCTIONS OF PUBLIC HIGHWAYS.

	Article		Article
Public highway shall not be obstructed, except, etc.	144	No defect of form, etc.	147
Order to remove obstructions, etc.	145	When defendant is convicted obstructions shall be removed at his cost.	148
Suit upon bond of applicant.	146		

Public highway shall not be obstructed, except, etc. O. C. 112.

Article 144. [124] 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.

Order to remove obstructions, etc. O. C. 113.

Art. 145. [125] 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.

Suit upon bond of applicant. O. C. 114.

Art. 146. [126] 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.

No defect of form, etc. O. C. 115.

Art. 147. [127] No mere defect of form shall vitiate any order or proceeding of the commissioners' court in establishing a highway.

When defendant is convicted, obstructions shall be removed at his costs.

Art. 148. [128] 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.

Article
On conviction for libel, court may order copies destroyed..... 149

On conviction for libel, court may order copies destroyed. O. C. 116.

Article 149. [129] 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.

CHAPTER EIGHT.

OF THE SUPPRESSION OF OFFENSES AGAINST PERSONAL LIBERTY.

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Writ of habeas corpus. O. C. 117.

Article 150. [130] The writ of habeas corpus is the remedy to be used when any person is restrained of his liberty.

I. DEFINITION AND OBJECT OF THE WRIT.

What a writ of habeas corpus is, etc. O. C. 118.

Art. 151. [131] 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.

To whom directed, etc. O. C. 119.

Art. 152. [132] 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.

Not invalid for want of form. O. C. 120.

Art. 153. [133] 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.

Provisions relating to, how construed. O. C. 121.

Art. 154. [134] 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.

II. BY WHOM AND WHEN GRANTED.

By whom writ may be granted. O. C. 122.

Art. 155. [135] 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.

Before indictment, writ returnable where, etc. O. C. 123.

Art. 156. [136] Before indictment found the writ may be made returnable to any county in the state.

After indictment, returnable, where, etc. O. C. 124.

Art. 157. [137] 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.

When the applicant is charged with felony. O. C. 125.

Art. 158. [138] 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.

When the applicant is charged with misdemeanor.

Art. 159. [139] 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.

Proceedings under the writ. O. C. 129.

Art. 160. [140] 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.

Time appointed for hearing. O. C. 127.

Art. 161. [141] 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.

Who may present petition for relief. O. C. 128.

Art. 162. [142] 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.

The word "applicant" refers to. O. C. 129.

Art. 163. [143] 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.

Requisites of petition. O. C. 130.

Art. 164. [144] 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.

The writ shall be granted without delay, unless, etc. O. C. 131.

Art. 165. [145] 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.

Writ may be issued without application. O. C. 132.

Art. 166. [146] 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.

Judge may issue a warrant of arrest, when. O. C. 133.

Art. 167. [147] 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.

The person having custody of the prisoner may be arrested, when. O. C. 134.

Art. 168. [148] 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.

Proceedings under the warrant. O. C. 135.

Art. 169. [149] 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.

Officer executing warrant may exercise same power, etc. O. C. 136.

Art. 170. [150] 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.

The words "confined," "imprisoned," etc., refer to, etc. O. C. 137.

Art. 171. [151] 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.

Art. 172. [152] 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. By restraint is meant, etc. O. C. 138.

Art. 173. [153] 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. The writ of habeas corpus is intended to be applicable, when. O. C. 139.

Art. 174. [154] 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. Person committed in default of bail is entitled to the writ, when. O. C. 141.

Art. 175. [155] 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. Person afflicted with disease may be removed, when. O. C. 141.

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

Art. 176. [156] The service of the writ may be made by any person competent to testify. Who may serve writ. O. C. 143.

Art. 177. [157] 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 refuse admittance to the person wishing to make the service, or conceal 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 return, the manner and the time of the service of the writ. How writ may be served and returned. O. C. 144.

Art. 178. [158] 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. The return shall be under oath, if made by a person other than an officer. O. C. 145.

Art. 179. [159] 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. The person on whom the writ is served shall obey same, etc. O. C. 146.

Art. 180. [160] The return is made by stating in plain language upon the copy of the writ or some paper connected with it— How the return shall be made. O. C. 147, 148.

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.

The person in custody shall be brought before the judge, etc. O. C. 149.

Art. 181. [161] 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.

Custody of prisoner pending examination on habeas corpus.

Art. 182. [162] 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.

The court shall allow reasonable time. O. C. 150.

Art. 183. [163] The court or judge granting the writ of habeas corpus shall allow reasonable time for the production of the person detained in custody.

Person having the illegal custody of another, who refuses to obey the writ, etc., shall be punished, how. O. C. 151.

Art. 184. [164] When service has been made upon a person charged with 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.

Further penalty, etc., for disobeying writ. O. C. 152.

Art. 185. [165] 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.

Applicant for writ may be brought before court. O. C. 153.

Art. 186. [166] 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.

Death, etc., of applicant sufficient return to writ. O. C. 154.

Art. 187. [167] 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.

Proceedings when a prisoner dies. O. C. 158.

Art. 188. [168] 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.

Who shall represent the state in habeas corpus cases. O. C. 156.

Art. 189. [169] In felony 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.

Prisoner shall be discharged, when. O. C. 157.

Art. 190. [170] 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.

Where party is indicted for capital offense. O. C. 158.

Art. 191. [171] 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.

When court has no jurisdiction.

Art. 192. [172] 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.

Where no indictment has been found, etc. O. C. 159.

Art. 193. [173] 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.

Action of court upon examination. O. C. 160.

Art. 194. [174] 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.

If the commitment be informal or void, etc. O. C. 161.

Art. 195. [175] 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.

If there be probable cause to believe an offense has been committed. O. C. 162.

Art. 196. [176] 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.

The court may summon the magistrate who issued the warrant. O. C. 163.

Art. 197. [177] 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.

A written issue in case under habeas corpus not necessary. O. C. 164.

Art. 198. [178] 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.

The applicant shall open and conclude the argument. O. C. 165.

Art. 199. [179] The applicant shall have the right to open and conclude, by himself or counsel, the argument upon the trial under habeas corpus.

Costs of the proceedings, how disposed of. O. C. 166.

Art. 200. [180] 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.

If the court be in session the clerk shall record the proceedings. O. C. 167.

Art. 201. [181] 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.

If the proceedings be had before a judge in vacation, etc. O. C. 168.

Art. 202. [182] 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.

Provisions of the two preceding articles refer to, etc. O. C. 169.

Art. 203. [183] 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.

Court may grant all necessary orders, etc. O. C. 171.

Art. 204. [184] 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.

Art. 205. [185] 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. Meaning of "return."

IV. GENERAL PROVISIONS.

Art. 206. [186] 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. A person discharged before the indictment shall not be again imprisoned, unless, etc. O. C. 172.

Art. 207. [187] 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 175 and 209. A person once discharged, or admitted to bail, may be committed, when. O. C. 173.

Art. 208. [188] 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 175 and 209. A person committed for a capital offense shall not be entitled to the writ, unless, etc. O. C. 174.

Art. 209. [189] 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. A party may obtain the writ a second time, when, etc. O. C. 175.

Art. 210. [191] 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. Officer refusing to execute writ, etc., shall be punished, etc. O. C. 178.

Art. 211. [192] 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 184 of this Code. Any one having the custody of another, who refuses to obey the writ, etc., shall be punished, how. O. C. 178.

Any jailer, etc., who refuses to furnish a copy of process under, etc.
O. C. 179.

Art. 212. [193] 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.

Person shall not be discharged under writ of habeas corpus, when.
O. C. 180.

Art. 213. [194] 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.

This chapter applies to what cases.
O. C. 181.

Art. 214. [195] 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.

TITLE IV.

The Time and Place of Commencing and Prosecuting Criminal Actions.

CHAPTER ONE.

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Article 215. [196] 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. For treason and forgery. O. C. 182.

Art. 216. [197] An indictment for the offense of rape may be presented within one year, and not afterward. For rape, one year. O. C. 184.

Art. 217. [198] An indictment for theft punishable as a felony, arson, burglary, robbery and counterfeiting may be presented within five years, and not afterward. For theft, etc., five years. O. C. 183.

Art. 218. [199] 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. Other felonies. O. C. 185.

Art. 219. [200] For all misdemeanors an indictment or information may be presented within two years from the commission of the offense, and not afterward. Misdemeanors, two years. O. C. 186.

Art. 220. [201] 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. Days to be excluded from computation of time.

Art. 221. [202] The time during which a person accused of an offense is absent from the state shall not be computed in the period of limitation. Absence from the state not computed. O. C. 187.

Art. 222. [203] An indictment is to be considered as "presented" when it has been duly acted upon by the grand jury and received by the court. An indictment is "presented," when. O. C. 188.

Art. 223. [204] An information is to be considered as "presented" when it has been filed by the proper officer in the proper court. An information is "presented," when. O. C. 189.

CHAPTER TWO.

OF THE COUNTY WITHIN WHICH OFFENSES MAY BE PROSECUTED.

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For offenses committed wholly or in part without the state. O. C. 190.

Article 224. [205] 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.

Forgery and uttering forged papers may be prosecuted, where. O. C. 190a.

Art. 225. [206] 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.

Counterfeiting, where. O. C. 207.

Art. 226. [207] 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.

Perjury and false swearing, where. O. C. 190a.

Art. 227. [208] 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.

Offenses committed on the boundary of two counties. O. C. 191.

Art. 228. [209] 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.

Person dying out of the state of an injury inflicted in the state, etc. O. C. 192.

Art. 229. [210] 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.

Person within the state inflicting injury on another out of the state, where prosecuted. O. C. 193.

Art. 230. [211] 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.

Person without the state inflicting an injury on one within the state, where prosecuted. O. C. 194.

Art. 231. [212] 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.

An offense committed on a stream, the boundary of this state, where prosecuted. O. C. 195.

Art. 232. [213] 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.

Person receiving an injury in one county and dying in another, offender, where prosecuted. O. C. 196.

Art. 233. [214] 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.

An offense committed on a stream, etc., the boundary between two counties, punishable, where. O. C. 197.

Art. 234. [215] 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.

Property stolen in one county and carried to another, offender prosecuted, where. O. C. 198.

Art. 235. [216] 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.

Accomplices and accessories may be prosecuted, where. (Act April 4, 1889.)

Art. 236. [216a] 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.

Receiving and concealing stolen property may be prosecuted, where. Ib.

Art. 237. [216b] 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.

Offenses committed out of the state by commissioner of deeds, prosecuted, where. O. C. 200.

Art. 238. [217] 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.

Offenses committed on vessels within the state, prosecuted, where. O. C. 201.

Art. 239. [218] 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.

Offense of embezzlement, prosecuted, where. O. C. 203.

Art. 240. [219] 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.

False imprisonment, kidnaping and abduction, prosecuted, where. O. C. 204.

Art. 241. [220] The jurisdiction for the trial of the offenses of false imprisonment, kidnapping 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.

Conspiracy, where prosecuted.

Art. 242. [221] 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.

Conviction or acquittal in another state bar to prosecution in this state. O. C. 205.

Art. 243. [222] When an act has been committed 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.

Conviction, etc., in one county, bar to prosecution in another, when. O. C. 206.

Art. 244. [223] 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.

Proof of jurisdiction sufficient to sustain allegation of venue, when. O. C. 207.

Art. 245. [224] 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.

Offenses not enumerated, prosecuted where. O. C. 208.

Art. 246. [225] 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.

TITLE V.

Of Arrest, Commitment and Bail.

CHAPTER ONE.

OF ARREST WITHOUT WARRANT.

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Article 247. [226] 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." Arrest without warrant, when. O. C. 209.

Art. 248. [227] 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. Same subject. O. C. 210.

Art. 249. [228] 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. Municipal authorities may authorize arrest without warrant, when. O. C. 211.

Art. 250. [229] 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. May arrest without warrant when felony has been committed. O. C. 212.

Art. 251. [230] 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. In all such cases the officer may adopt the same measures as, etc. O. C. 213.

Art. 252. [231] 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. In such cases must take the offender before the nearest magistrate. O. C. 214.

CHAPTER TWO.

OF ARREST UNDER WARRANT.

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Definition "warrant of arrest." O. C. 215.

Article 253. [232] 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.

Is sufficient if it have, etc. O. C. 216.

Art. 254. [233] 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.

Magistrate may issue warrant of arrest in what cases. O. C. 217, 218.

Art. 255. [234] 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.

"Complaint" is what. O. C. 219.

Art. 256. [235] The affidavit made before the magistrate, which charges the commission of an offense, is called a complaint.

Requisites of complaint. O. C. 220.

Art. 257. [236] 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.

Art. 258. [237] A warrant of arrest issued by a judge of the supreme court, courts of appeals, district or county court, shall extend to every part of the state.

Warrant issued by supreme judge, etc., extends to every part of the state. O. C. 221.

Art. 259. [238] When a warrant of arrest is issued by a magistrate other than those named in the preceding article, it can not be executed in another county than the one in which it issues, except—

Warrant issued by other magistrate does not extend, etc., except, etc. O. C. 222.

1. It be indorsed by some one of the magistrates named in the preceding article, in which case it can 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 magistrate named in the preceding article, "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.

Art. 260. [239] 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 258 the peace officer receiving the same shall execute it without delay. If it be issued by any other magistrate than is named in article 258, 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.

Warrant of arrest may be forwarded by telegraph, etc. (Act April 17, 1871, p. 39.)

Art. 261. [240] 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.

Complaint by telegraph and proceedings thereon. (Act April 17, 1871, p. 39.)

Art. 262. [241] 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.

Certified copy of warrant or complaint to be deposited with telegraph manager, etc. Ib.

Art. 263. [242] 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.

Duty of telegraph manager at the office of delivery. Ib.

Art. 264. [243] 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

Warrant or complaint must be under official seal, etc. Ib.

requirements of the law in relation thereto have been fully complied with.

Telegram to be prepaid, unless, etc. Ib.

Art. 265. [244] 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."

Warrant may be directed to any suitable person, when. O. C. 223.

Art. 266. [245] 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.

Can not be compelled to execute warrant, etc.; has same right as peace officer. O. C. 224.

Art. 267. [246] 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.

How warrant is executed, etc. O. C. 225.

Art. 268. [247] 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.

Arrest in one county for felony committed in another. O. C. 226.

Art. 269. [248] 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.

Arrest in one county for misdemeanor committed in another. O. C. 226.

Art. 270. [249] 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.

Proceedings when party arrested for misdemeanor, etc., fails to give bond.

Art. 271. [250] 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.

Duty of sheriff receiving notice, etc.

Art. 272. [251] 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.

Prisoner shall be discharged if not demanded in thirty days.

Art. 273. [252] 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.

A person is said to be arrested, when. O. C. 227.

Art. 274. [253] 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.

An arrest may be made, when. O. C. 228.

Art. 275. [254] An arrest may be made on any day, or at any time of the day or night.

What force may be used. O. C. 229.

Art. 276. [255] 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.

Art. 277. [256] 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. In case of felony, may break door. O. C. 230.

Art. 278. [257] 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. Authority to arrest must be made known. O. C. 231.

Art. 279. [258] 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. Prisoner escaping, etc., may be retaken without warrant. O. C. 232.

CHAPTER THREE.

OF THE COMMITMENT OR DISCHARGE OF THE ACCUSED.

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Article 280. [259] 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. Proceeding when brought before a magistrate. O. C. 233.

Art. 281. [260] 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. When examination postponed for reasonable time; custody and disposition of the accused during that time. O. C. 234.

Art. 282. [261] 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. Defendant shall be informed of his right to make statement, etc. O. C. 235-241.

Art. 283. [262] 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, Voluntary statement of accused. O. C. 235, 242, 243.

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.

Witness may be placed under rule. O. C. 235.

Art. 284. [263] 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.

Right of counsel to examine witness. O. C. 236.

Art. 285. [264] 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.

Same rules of evidence govern as on final trial.

Art. 286. [265] The same rules of evidence shall apply to and govern a trial before an examining court that apply to and govern a final trial.

Witnesses shall be examined in presence of the accused. O. C. 240.

Art. 287. [266] The examination of each witness shall be in the presence of the accused.

Testimony shall be reduced to writing, signed and certified. O. C. 238.

Art. 288. [267] 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.

Magistrate may issue attachment for witnesses. O. C. 244.

Art. 289. [268] 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 subpoena for that purpose.

May issue attachment to another county, when. O. C. 246.

Art. 290. [269] 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.

Witness need not be tendered fees, etc. O. C. 246.

Art. 291. [270] It shall not be necessary where a witness is attached to tender his witness fees or expenses to him.

Attachment shall be executed forthwith. O. C. 245.

Art. 292. [271] 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.

Manner of postponing examination to procure testimony. O. C. 239.

Art. 293. [272] 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.

Capital offense; who may discharge. O. C. 248.

Art. 294. [273] 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.

Proceedings when insufficient bail has been taken. O. C. 249.

Art. 295. [274] 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.

When committed, discharged, or admitted to bail. O. C. 250.

Art. 296. [275] 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.

When no safe jail, etc. O. C. 251.

Art. 297. [276] 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.

To whom warrant is directed in such case. O. C. 251.

Art. 298. [277] 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.

Warrant of commitment; its requisites. O. C. 253.

Art. 299. [278] 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.

When prisoner sent to jail of another county, etc. O. C. 254.

Art. 300. [279] 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.

Duty of sheriff in reference to prisoners. O. C. 255.

Art. 301. [280] 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.

Discharge shall not prevent, etc. O. C. 256.

Art. 302. [281] 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.

CHAPTER FOUR.

OF BAIL.

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I. GENERAL RULES APPLICABLE TO ALL CASES OF BAIL.

Definition of "bail." O. C. 257, 258.

Article 303. [282] "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.

Definition of "recognizance." O. C. 259.

Art. 304. [283] 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.

Definition of "bail bond." O. C. 260.

Art. 305. [284] 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 ac-

cusation; it is written out and signed by the defendant and his sureties.

When a bail bond is given. O. C. 261.

Art. 306. [285] 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.

What the word "bail" includes. O. C. 262.

Art. 307. [286] 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.

II. RECOGNIZANCE AND BAIL BOND.

Requisites of a recognizance. O. C. 263.

Art. 308. [287] 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. That it state the name of the offense with which the defendant is charged.

3. That it appear by the recognizance that the defendant is accused of an offense against the laws of this state.

4. That the time and place when and where the defendant is bound to appear be stated, and the court before which he is bound to appear.

Requisites of a bail bond. O. C. 264.

Art. 309. [288] 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. That the offense of which the defendant is accused be distinctly named in the bond, and that it appear therefrom that he is accused of some offense against the laws of the state.

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.

Rules laid down in this chapter applicable to all cases where bail is taken. O. C. 265.

Art. 310. [289] 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.

Bail bond and recognizance. O. C. 267.

Art. 311. [290] 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.

Minor or married woman can not be security. O. C. 268.

Art. 312. [291] 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.

In what manner bail shall be taken. O. C. 269.

Art. 313. [292] 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.

Property exempt from sale shall not be liable for, etc. O. C. 270.

Art. 314. [293] 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.

How sufficiency of sureties shall be ascertained. O. C. 271.

Art. 315. [294] 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 constitution 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.

Affidavit not conclusive, but further evidence required, when.

Art. 316. [295] 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.

Rules for fixing amount of bail. O. C. 272.

Art. 317. [296] 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.

III. SURRENDER OF THE PRINCIPAL BY HIS BAIL.

Surety may surrender his principal, when. O. C. 273.

Art. 318. [297] Those who have become bail for the accused, or either of them, may at any time relieve themselves of their under-

taking by surrendering the accused into the custody of the sheriff of the county where he is prosecuted.

When surrender is made during term of court. O. C. 274.

Art. 319. [298] 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.

When court is not in session. O. C. 275.

Art. 320. [299] If the surrender be made while the court is not in session the sheriff may take himself the necessary bail bond.

Surety may obtain a warrant of arrest for principal, when. O. C. 274.

Art. 321. [300] 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.

Proceedings when surrender is in term time and accused fails to give bond. O. C. 275.

Art. 322. [301] If the accused fail or refuse 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.

When surrender is made in vacation and accused fails, etc. O. C. 276.

Art. 323. [302] 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.

Sheriff, etc., may take bail bond, when. O. C. 279.

Art. 324. [303] 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.

Sheriff, etc., not authorized to take bail in felony case when court is in session. O. C. 280.

Art. 325. [304] 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, such sheriff or peace officer is not authorized to take a bail bond of the accused, but must take the accused forthwith before such court, that he may there enter into recognizance or be committed, as the case may be.

May take bail in felony cases, when. O. C. 281.

Art. 326. [305] 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.

Sureties are severally bound, etc. O. C. 281-283.

Art. 327. [306] 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.

IV. BAIL BEFORE THE EXAMINING COURT.

Rules in relation to bail, and of a general nature, applicable in this court. O. C. 284.

Art. 328. [307] 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.

Proceedings when bail is granted. O. C. 285.

Art. 329. [308] 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.

When bail can not be allowed, and when it shall be allowed. O. C. 286-287.

Art. 330. [309] 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.

Reasonable time given to procure bail. O. C. 289.

Art. 331. [310] Reasonable time shall be given the accused to procure security.

When bail is not given, magistrate shall commit accused, etc. O. C. 290.

Art. 332. [311] 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.

When accused is ready to give bail a bond shall be prepared, etc. O. C. 291.

Art. 333. [312] 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.

Accused shall be liberated upon giving bond. O. C. 293-294.

Art. 334. [313] 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.

Magistrate shall certify proceedings to proper court. O. C. 295.

Art. 335. [314] 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.

Duty of clerks who receive such proceedings.

Art. 336. [315] 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.

Duty of magistrate in all cases to certify and deliver proceedings. O. C. 296.

Art. 337. [316] 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 335, 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.

Art. 338. [317] 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.

Accused may waive an examination; proceedings in such case.

V. BAIL BY WITNESSES.

Art. 339. [318] 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.

Witnesses required to give bond, when. O. C. 297.

Art. 340. [319] 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.

Of amount of security required of a witness. O. C. 298.

Art. 341. [320] 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.

Force and effect of witnesses' bonds. O. C. 299.

Art. 342. [321] 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 339, 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 339 and giving his individual bond.

Witness who fails, etc., to give bond when required may be committed.

TITLE VI.

Search Warrants.

CHAPTER ONE.

GENERAL RULES.

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Definition of word "stolen"	346		

Definition of "search warrant." O. C. 300.

Article 343. [322] 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.

For what purposes it may be issued. O. C. 301.

Art. 344. [323] 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.

Its object. O. C. 302.

Art. 345. [324] 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.

Definition of word "stolen."

Art. 346. [325] 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.

When asked for in reference to property not stolen. O. C. 304.

Art. 347. [326] 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.

These rules applicable to all cases.

Art. 348. [327] 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.

CHAPTER TWO.

WHEN AND HOW A SEARCH WARRANT MAY BE ISSUED.

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Contents of application for a search warrant. O. C. 307

Article 349. [328] 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.

Contents of application for warrant to discover and seize. O. C. 306.

Art. 350. [329] 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.

Contents of application for warrant to search suspected place. O. C. 308.

Art. 351. [330] 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 commission 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.

Warrant to arrest may issue with the search warrant in certain cases. O. C. 309.

Art. 352. [331] 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.

Search warrant may command officer to bring party accused before the magistrate.

Art. 353. [332] 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.

Requisites of a search warrant. O. C. 311.

Art. 354. [333] A search warrant to seize property stolen and concealed 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 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.

Requisites of a warrant to search suspected place. O. C. 312.

Art. 355. [334] 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.

CHAPTER THREE.

OF THE EXECUTION OF A SEARCH WARRANT.

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Warrant shall be executed without delay. O. C. 313, 319.

Article 356. [335] 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.

Three whole days allowed for warrant to run.

Art. 357. [336] The three days' time allowed for the execution of a search warrant shall be three whole days, exclusive of the day of its issuance and of the day of its execution.

Officer shall give notice of purpose to execute warrant. O. C. 315.

Art. 358. [337] 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.

Power of officer executing warrant. O. C. 314, 316.

Art. 359. [338] 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.

When officer may enter house by force. O. C. 317.

Art. 360. [339] 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.

Shall seize person accused and property, and take them before magistrate. O. C. 318.

Art. 361. [340] 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.

Officer shall receipt for property. O. C. 320.

Art. 362. [341] An officer taking any property, implements, arms or munitions shall receipt therefor to the person from whose possession the same may have been taken.

How return made. O. C. 321.

Art. 363. [342] 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

All persons have the right to prevent the consequences of theft, etc. O. C. 94.

Art. 364. [343] 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.

CHAPTER FOUR.

PROCEEDINGS ON THE RETURN OF A SEARCH WARRANT.

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Magistrate shall certify record, etc., of proceedings to proper court	371

Disposition of stolen property, etc. O. C. 322.

Article 365. [344] 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.

Officer seizing implements, etc., shall keep same subject, etc. O. C. 323.

Art. 366. [345] When a warrant has been issued for the purpose of searching a suspected place, and there be found any such implements, arms or munitions 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.

Magistrate shall proceed to investigate, etc. O. C. 330.

Art. 367. [346] 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.

Shall discharge defendant, when. O. C. 332.

Art. 368. [347] 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.

Sheriff, etc., shall furnish magistrate schedule of property seized. O. C. 324.

Art. 369. [348] The sheriff or 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.

Proceedings when magistrate is satisfied that warrant was issued upon good ground. O. C. 331.

Art. 370. [350] 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.

Art. 371. [351] 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 369.

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Jury commissioners shall be appointed, and their qualifications. (Act Aug. 1, 1877, p. 79, §4.)

Article 372. [352] 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.

Commissioners shall be notified of appointment, etc. Ib.

Art. 373. [353] 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.

Oath of jury commissioners. Ib.

Art. 374. [354] 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.

Shall be instructed in their duties, furnished with room, stationery, etc. Ib. §6.

Art. 375. [355] 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.

Shall be kept free from intrusion; shall not separate, etc. Ib.

Art. 376. [356] 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.

Shall select grand jurors. Ib. p. 83, §28.

Art. 377. [357] 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.

Qualifications of grand jurors. Ib. p. 78, §§1-3. O. C. 389. (Const., art. 16, §19.)

Art. 378. [358] 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.
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.

Names of grand jurors shall be returned, how. Ib. §28.

Art. 379. [359] 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.

Judge shall deliver list to clerk. Ib. §8.

Art. 380. [360] 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.

Oath shall be administered to clerk, etc., by judge. Ib.

Art. 381. [361] 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 to 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."

Deputy clerk shall take same oath. Ib.

Art. 382. [362] Should the clerk subsequently appoint a deputy such clerk shall administer to him the same oath at the time of such appointment.

When clerk shall open lists, etc. Ib. §9.

Art. 383. [363] 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.

Mode of summoning grand jurors. Ib.

Art. 384. [364] 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.

Return of officer. Ib.

Art. 385. [365] 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.

Juror may be fined for not attending. Ib. §10.

Art. 386. [366] 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.

Failure to select, etc., grand jury; duty of court. O. C. 347.

Art. 387. [367] 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.

When less than twelve attend, court shall order others summoned. O. C. 354.

Art. 388. [368] 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.

When jurors shall be required to attend forthwith.

Art. 389. [369] 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.

Sheriff not to summon disqualified persons.

Art. 390. [370] 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 378.

Court shall test qualifications of jurors, when. O. C. 345.

Art. 391. [371] 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.

Art. 392. [372] 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 direction, touching his qualifications. Shall be interrogated touching qualifications. O. C. 349.

Art. 393. [373] In trying the qualifications of any person to serve as a grand juror, he shall be asked these questions: Mode of testing juror's qualifications. O. C. 350.

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?

2. Are you a freeholder in this state, or a householder in this county?

3. Are you able to read and write?

Art. 394. [374] When, by the answers 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 a qualified voter. When juror is qualified, shall be accepted, etc. O. C. 351.

Art. 395. [375] Any person summoned who does not possess the requisite qualifications shall be excused by the court from serving. When not qualified, shall be excused. O. C. 352.

Art. 396. [376] 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. Jury shall be impaneled when, unless, etc. O. C. 353.

Art. 397. [377] 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. Any person may challenge, when. O. C. 362.

Art. 398. [378] By the array of grand jurors is meant the whole body of persons summoned to serve as such before they have been impaneled. Definition of "array." O. C. 368.

Art. 399. [379] 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. Meaning of "impaneled," etc. O. C. 360.

Art. 400. [380] A challenge to the array shall be made in writing, and for these causes only: Causes for challenge to the array. O. C. 363.

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.

Art. 401. [381] A challenge to a particular grand juror may be made orally, and for the following causes only: Causes for challenge to a particular juror. O. C. 364.

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.

Art. 402. [382] 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. Court shall decide challenge summarily. O. C. 365.

Art. 403. [383] 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 Court shall order other jurors summoned, when. O. C. 366, 367.

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.

Oath of grand jurors. O. C. 356. (Amended by Act March 13, 1875, p. 166.)

Art. 404. [384] 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."

Court shall instruct grand jury. O. C. 357.

Art. 405. [385] After the grand jury has been sworn the court shall give them instruction as to their duty.

Bailiffs may be appointed; their oath. O. C. 358.

Art. 406. [386] 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."

Bailiff's duties. O. C. 359.

Art. 407. [387] 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.

Bailiff shall take no part in discussions of grand jury; punishment. O. C. 361.

Art. 408. [388] 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.

Another foreman appointed, when. O. C. 361.

Art. 409. [389] 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.

Nine members constitute a quorum. (Const., art. 5, §13.) O. C. 370.

Art. 410. [390] Nine members shall be a quorum for the purpose of discharging any duty or exercising any right properly belonging to the grand jury.

May be reassembled after having been discharged for the term.

Art. 411. [391] 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.

CHAPTER TWO.

OF THE DUTIES, PRIVILEGES AND POWERS OF THE GRAND JURY.

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Suitable place to be prepared for grand jury. O. C. 371.

Article 412. [392] 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.

Deliberations shall be secret. O. C. 372.

Art. 413. [393] 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.

Attorney representing the state may go before, etc. O. C. 373.

Art. 414. [394] 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.

Attorney may examine witnesses, etc. O. C. 375.

Art. 415. [395] 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.

Grand jury may send for attorney representing the state, etc. O. C. 374.

Art. 416. [396] 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.

Grand jury may seek advice from court. O. C. 276.

Art. 417. [397] 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.

Foreman shall preside over grand jury, etc.

Art. 418. [398] 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.

Grand jury shall meet and adjourn. O. C. 377.

Art. 419. [399] 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.

Duties of grand jury. O. C. 378.

Art. 420. [400] 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.

Foreman may issue process for witnesses. O. C. 379. (Act Aug. 15, 1870.)

Art. 421. [401] 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.

Attachment for witnesses in another county, obtained how. (Act Aug. 15, 1870.)

Art. 422. [402] 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 witness, 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.

Attachment may be obtained in vacation, etc. Ib.

Art. 423. [403] 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.

Bailiff, etc., shall execute and return process from grand jury, etc.

Art. 424. [404] 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.

Evasion of service by witness may be punished by fine.

Art. 425. [405] 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 willfully evading the service of such summons or attachment, the court may fine such witness as for a contempt not exceeding one hundred dollars.

When witness refuses to testify, dealt with how. O. C. 381.

Art. 426. [406] 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.

Oath to witnesses. O. C. 382. (Amended by act March 15, 1875, p. 108.)

Art. 427. [407] 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."

How witnesses shall be questioned. O. C. 383.

Art. 428. [408] The grand jury in propounding questions to a 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.

When a felony has been committed by unknown person. O. C. 383a.

Art. 429. [409] 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.

After the testimony grand jury shall vote. O. C. 385.

Art. 430. [411] 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.

Memorandum shall state what. O. C. 386.

Art. 431. [412] 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.

Indictment shall be prepared by attorney and signed, etc., by foreman. O. C. 387.

Art. 432. [413] 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.

Indictment shall be presented in open court. O. C. 388.

Art. 433. [414] 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.

Presentment to be entered of record, etc. (Act May 25, p. 8.)

Art. 434. [415] 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.

CHAPTER THREE.

OF INDICTMENTS AND INFORMATIONS.

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Felonies presented by indictment only. O. C. 390. (Const., art. 1, §10.)

Article 435. [416] All felonies shall be presented by indictment only, except in cases specially provided for.

Misdemeanors presented by indictment, or, etc. O. C. 391.

Art. 436. [417] All misdemeanors may be presented by either information or indictment.

All offenses must be presented by indictment or information. O. C. 392.

Art. 437. [418] 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.

An "indictment" is what. O. C. 394.

Art. 438. [419] 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.

Requisites of an indictment. O. C. 395.

Art. 439. [420] 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.

What should be stated in an indictment, etc. O. C. 396.

Art. 440. [421] 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.

The certainty required. O. C. 398.

Art. 441. [422] 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.

Particular intent; intent to defraud. O. C. 399.

Art. 442. [423] 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.

Allegation of venue, etc. O. C. 400.

Art. 443. [424] 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.

Allegation of name.

Art. 444. [425] 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.

Allegation of ownership.

Art. 445. [426] 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.

Description of property.

Art. 446. [427] 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.

"Felonious" and "feloniously" not necessary.

Art. 447. [428] In an indictment for a felony it is not necessary to use the words "felonious" or "feloniously."

Certainty; what sufficient. (Act March 26, 1881, ch. 57, p. 60, §1.)

Art. 448. [428a] 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.

Special and general terms in statute. Ib. §2.

Art. 449. [428b] 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.

"Public place"; allegation of. Ib. §3.

Art. 450. [428c] 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."

Act, with intent to commit an offense. Ib. §4.

Art. 451. [428d] 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.

Selling intoxicating liquor; sufficient allegations as to. Ib. §5.

Art. 452. [428e] 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.

Perjury; sufficient allegation for. Ib. §6.

Art. 453. [428f] 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.

Bribery; sufficient allegation for. Ib. §7.

Art. 454. [428g] 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.

Misapplication of public money; sufficient charge of. Ib. §8.

Art. 455. [428h] 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.

Description of money, etc., in theft, etc. Ib. §9.

Art. 456. [428i] 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.

Carrying weapons; indictment for. Ib. §10.

Art. 457. [428j] 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.

Certain forms of indictments prescribed. Ib. §11.

Art. 458. [428k] 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 willfully 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 willfully and without lawful authority detain C D against his consent."

"Form No. 18—Kidnaping: A B did falsely imprison C D for the purpose of removing him from the state."

"Form No. 19—Arson: A B did willfully burn a certain house, the property of C D."

"Form No. 20—Burglary: A B did break and enter the dwelling house of C D with intent to steal."

"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 of public moneys in his hands by virtue of his office, by converting said moneys to his own use."

Proof not dispensed with. Ib. §12.

Art. 459. [428l] Nothing contained in the eleventh section of this law 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.

Libel; indictment for. Ib. §13.

Art. 460. [428m] 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.

Disjunctive allegations. Ib. §14.

Art. 461. [428n] 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.

Statutory words need not be strictly followed. Ib. §15.

Art. 462. [428o] 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.

Matters of judicial notice, etc., need not be stated. Ib. §16.

Art. 463. [428p] 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.

Defects of form do not affect trial, etc. Ib. §17.

Art. 464. [428q] 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.

Definition of an "information." O. C. 402.

Art. 465. [429] 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.

Requisites of an information. O. C. 403.

Art. 466. [430] 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 committed 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.

Shall not be presented until oath has been made, etc. O. C. 404.

Art. 467. [431] 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.

Rules as to indictments applicable to informations. O. C. 406.

Art. 468. [432] The rules laid down in this chapter with respect to the allegations in indictments and the certainty required are applicable also to informations.

Indictment, etc., may contain several counts.

Art. 469. [433] 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.

When indictment or information has been lost, mislaid, etc. O. C. 406a.

Art. 470. [434] 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.

Order transferring cases. (Const., art. 5, §17; Act Aug. 12, 1876, p. 135; Acts of 1879, ch. 65, p. 71; Act Feb. 5, 1881, ch. 3, p. 2.)

Art. 471. [435] 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.

What causes shall be transferred to justice of the peace at county seat. (Const., art. 5, §16; Act April 3, 1879, ch. 65, p. 71; original Act Aug. 12, 1876, ch. 91, p. 135.)

Art. 472. [436] 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.

Duty of clerk of district court when case is transferred. (Act Aug. 12, 1876, p. 135.)

Art. 473. [437] 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.

Proceedings of court to which cases have been transferred. Ib.

Art. 474. [438] 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.

Cause improvidently transferred, shall be re-transferred.

Art. 475. [439] 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 retransferred 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 retransferred, the same as they were bound to appear before the court so transferring the same.

CHAPTER FOUR.

OF PROCEEDINGS PRELIMINARY TO TRIAL.

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I. OF ENFORCING THE ATTENDANCE OF DEFENDANT AND OF FORFEITURE OF BAIL.

Bail forfeited, when. O. C. 407.

Article 476. [440] 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.

Manner of taking a forfeiture. O. C. 408. (Amended.)

Art. 477. [441] 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, judg-

ment 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.

Citation to sureties. O. C. 409.

Art. 478. [442] 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.

Requisites of citation.

Art. 479. [443] 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.

Citation shall be served and returned as in civil actions. O. C. 412.

Art. 480. [444] 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.

Citation may be served by publication.

Art. 481. [445] 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.

County shall pay cost of publication.

Art. 482. [446] 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.

Service may be made out of the state, how.

Art. 483. [447] 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.

When surety is dead, citation to legal representatives.

Art. 484. [448] 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.

Case shall be placed upon civil docket.

Art. 485. [449] 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 defendants, and the proceedings had therein shall be governed by the same rules governing other civil actions.

Sureties may answer at next term. O. C. 410.

Art. 486. [450] 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.

Proceedings shall not be set aside for defect of form, etc.

Art. 487. [451] 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 of form may at any time be amended under the direction of the court.

Causes which will exonerate from liability on forfeiture. O. C. 414.

Art. 488. [452] 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 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 629.

Judgment final, when. O. C. 417.

Art. 489. [453] 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.

Judgment final by default, when.

Art. 490. [454] 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.

The court may remit, when. O. C. 415.

Art. 491. [455] 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.

Forfeiture shall be set aside, when, etc. O. C. 416.

Art. 492. [456] 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.

II. OF THE CAPIAS.

Definition of a "capias." O. C. 420.

Art. 493. [457] 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.

Its requisites. O. C. 421.

Art. 494. [458] 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.

Capias shall issue at once in all felony cases.

Art. 495. [459] 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.

In misdemeanor cases.

Art. 496. [460] 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.

Capias in case of forfeiture of bail.

Art. 497. [461] 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.

New bail in felony case, when.

Art. 498. [462] 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.

Capias does not lose its force, etc. O. C. 423.

Art. 499. [463] 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.

Officer shall give reasons for retaining capias, when.

Art. 500. [464] 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.

Capias may issue to several counties.

Art. 501. [465] Capiases for a defendant may be issued to as many counties as the district or county attorney may direct.

Sheriff, etc., can not take bail in felony cases, when. O. C. 427.

Art. 502. [466] 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.

Sheriff may take bail in felony cases, when. O. C. 426-432.

Art. 503. [467] 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.

Court shall fix amount of bail in felony cases, etc. O. C. 424.

Art. 504. [468] 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.

Who may arrest under capias. O. C. 425.

Art. 505. [469] 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.

Officer making arrest may take bail in misdemeanor, etc. O. C. 426.

Art. 506. [470] 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.

Arrest in capital case, in county where prosecution is pending.

Art. 507. [471] 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.

Arrest in capital case in another county than that in which prosecution is pending. O. C. 431.

Art. 508. [472] 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.

Bail bond and capias must be returned, etc. O. C. 422.

Art. 509. [473] 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.

Defendant placed in jail in another county, etc., shall be discharged, when. O. C. 434.

Art. 510. [474] 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.

Preceding article shall not apply, where. O. C. 434.

Art. 511. [475] 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.

Return of the capias, and what it shall show.

Art. 512. [476] 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.

III. OF WITNESSES AND THE MANNER OF ENFORCING THEIR ATTENDANCE.

Definition of "subpoena." O. C. 438.

Art. 513. [477] A "subpoena" 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.

What it may contain.

Art. 514. [478] A subpoena 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 subpoena may specify such evidence and direct that the witness bring the same with him and produce it in court.

Service and return of a subpoena.

Art. 515. [479] A subpoena is served by reading the same in the hearing of the witness. The officer having the subpoena 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.

Penalties for refusing to obey a subpoena. O. C. 444, 445.

Art. 516. [480] If a witness refuse to obey a subpoena 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.

Before fine is entered against witness, it must appear, etc. O. C. 446.

Art. 517. [481] Before a fine is entered against a witness for disobedience to a subpoena, 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.

What constitutes disobedience of a subpoena. O. C. 441.

Art. 518. [482] It shall be understood that a witness refuses to obey a subpoena—

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.

Fine against witness conditional, etc. O. C. 447; amend. 1895, p. 95.

Art. 519. [483] 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.

Witness may show cause, when and how. O. C. 448; Ib.

Art. 520. [484] 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.

Court may remit the whole or part of fine upon excuse made, etc. O. C. 452; Ib.

Art. 521. [485] 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.

When witness appears and testifies, etc., fine may be remitted. O. C. 449.

Art. 522. [486] 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.

Definition and requisites of an attachment. O. C. 439.

Art. 523. [487] 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 befo 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.

When an attachment may be issued. O. C. 436-440.

Art. 524. [488] When a witness who resides in the county of the prosecution has been duly served with a subpoena 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.

Attachment for witness out of the county may issue on application, when. O. C. 437.

Art. 525. [489] 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 have an attachment issued to compel the attendance of such witness. Such application shall be in writing and under oath, shall state the name of the witness and the county of his residence, and that his testimony is material to the defense. The state shall also be entitled to attachments 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 that his testimony is believed to be material for the state. In the cases provided for in this article it is not required that there should be a disobedience of a subpoena by the witness before the issuance of the attachment for him, but the attachment may be issued as herein provided in the first instance.

When witness has forfeited bail, attachment shall issue, unless, etc.

Art. 526. [490] When a witness has given a recognizance or bail bond to appear and testify and has forfeited the same, an attachment may issue forthwith for such witness to the county where he resides or where he may be found, unless the party whose witness he is shall waive the issuance of the same.

Execution and return of attachment.

Art. 527. [491] It is the duty of the officer receiving the attachment to execute the same by arresting the body of the witness named therein, and he shall make due return of the writ to the court, magistrate or foreman of the grand jury from which it issued, stating in such return the time and manner of its execution and the disposition that has been made of the witness. In case the writ has not been executed the officer shall state fully in his return the cause of his failure to execute it, and if the witness has not been found, the return shall show the diligence that has been used to find him, and shall state such information as the officer has, if any, as to the whereabouts of the witness.

When writ is returnable forthwith, duty of officer. O. C. 437a.

Art. 528. [492] When an attachment is made returnable forthwith it shall be the duty of the officer executing the same to take the witness immediately before the court, magistrate, or foreman of the grand jury from whence the writ issued, unless such witness give bail for his immediate appearance in obedience to said writ in accordance with law.

When the writ is not returnable forthwith. O. C. 437a.

Art. 529. [493] If the attachment be not returnable forthwith, but at some future day, the officer executing the same shall have authority to take a bail bond of such witness for his appearance in accordance with the requirements of such writ.

Bail bond of witness; its requisites.

Art. 530. [494] The bail bond of a witness shall be held sufficient if it have the following requisites:

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

2. That it state the amount in which the witness and his sureties are bound.

3. That it be conditioned for the appearance of the witness at the time and before the court, magistrate or grand jury named in the writ.

4. That it be signed by the witness or his sureties by writing their names or making their marks thereto.

Amount of bail to be required of witness.

Art. 531. [495] The court or magistrate issuing the attachment may direct therein the amount of bail to be required of the witness, in which case the officer executing the writ shall require the amount specified; but in case no amount of bail is specified in the writ, the officer executing the same shall require what he deems to be a reasonable amount of bail.

Good and sufficient security shall be required, etc.

Art. 532. [496] When the officer executing the writ takes a bail bond of a witness he shall require that the security be good and sufficient for the amount of the bond, as in other cases of bail, and shall approve the bond officially and return it with the writ to the court or magistrate from whence the writ issued.

Duty of officer when witness fails to give bond.

Art. 533. [497] In case the witness fails to give bond it shall be the duty of the officer executing the writ to keep him in custody and have him before the court or magistrate at the time and place named in the writ.

When writ is executed in another county, etc., duty of officer. O. C. 437a.

Art. 534. [498] When the writ is executed in a county other than the one in which the witness is required to appear, and the witness fails to give bond, it shall be the duty of the sheriff of the county in which such writ is executed to keep the witness in his custody, and forthwith to deliver him, together with such writ, to the sheriff

of the county from whence the writ issued, who shall keep the witness in custody as provided in the preceding article.

Witness shall be released upon giving bond.

Art. 535. [499] A witness who is in custody for failing to give bond shall be at once released upon giving the bond required.

Either party may have witness recognized, etc.

Art. 536. [500] 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.

Personal recognizance of witness may be taken, when.

Art. 537. [501] 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.

Recognizance or bail bond of witness may be enforced, how. O. C. 437b.

Art. 538. [502] 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.

Sureties can not discharge themselves after a forfeiture. O. C. 453.

Art. 539. [503] 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.

IV. SERVICE OF A COPY OF THE INDICTMENT.

Copy of indictment delivered to defendant in case of felony. O. C. 458.

Art. 540. [504] 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 deliver such copy to the sheriff, together with a writ directed to such sheriff, commanding him forthwith to deliver such certified copy to the defendant.

Service of copy and return of writ.

Art. 541. [505] 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.

When defendant is on bail in felony. O. C. 460.

Art. 542. [506] 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.

May demand a copy in misdemeanors. O. C. 459.

Art. 543. [507] 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.

V. OF ARRAIGNMENT AND OF PROCEEDINGS WHERE NO ARRAIGNMENT IS NECESSARY.

No arraignment of defendant, except, etc. O. C. 461.

Art. 544. [508] There shall be no arraignment of a defendant except upon an indictment for a capital offense.

An arraignment; for what purpose. O. C. 462.

Art. 545. [509] An arraignment takes place for the purpose of reading to the defendant the indictment against him and hearing his plea thereto.

No arraignment until two days after service of copy, etc. O. C. 463.

Art. 546. [510] 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.

Court shall appoint counsel, when. O. C. 466.

Art. 547. [511] 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.

Name as stated in indictment. O. C. 408.

Art. 548. [512] 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 indicted 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.

If defendant suggests different name. O. C. 469.

Art. 549. [513] 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.

If defendant refuse to give his real name. O. C. 470.

Art. 550. [514] 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.

Where name is unknown, etc. O. C. 471.

Art. 551. [515] 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.

Indictment read. O. C. 472.

Art. 552. [516] 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.

Plea of not guilty entered upon the minutes of the court. O. C. 473.

Art. 553. [517] 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.

Plea of guilty not received, unless, etc. O. C. 474.

Art. 554. [518] 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.

Jury shall be impaneled, when. O. C. 476.

Art. 555. [519] 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.

Same proceedings in respect to name of defendant in all cases. O. C. 479.

Art. 556. [520] 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.

VI. OF THE PLEADINGS IN CRIMINAL ACTIONS.

Indictment or information. O. C. 481.

Art. 557. [521] The primary pleading in criminal action on the part of the state is the indictment or information.

Art. 558. [522] On the part of the defendant the following are the only pleadings: Defendant's pleading. O. C. 482.

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.

Art. 559. [523] A motion to set aside an indictment or information shall be based on one or more of the following causes, and no other: Motion to set aside indictment, etc., for what causes only. O. C. 483.

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.

Art. 560. [524] An issue of fact arising upon a motion to set aside an indictment or information shall be tried by the judge without a jury. Motion shall be tried by judge without jury. O. C. 483.

Art. 561. [525] The only special pleas which can be heard for the defendant are: Only special pleas for defendant. O. C. 484.

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.

Art. 562. [526] Every special plea shall be verified by the affidavit of the defendant. Special plea must be verified. O. C. 485.

Art. 563. [527] All issues of fact presented by a special plea shall be tried by a jury. Issues of fact on special plea to be tried by jury. O. C. 486.

Art. 564. [528] There is no exception to the substance of an indictment or information, except— Exceptions to the substance of an indictment. O. C. 487.

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.

Art. 565. [529] Exceptions to the form of an indictment or information may be taken for the following causes only: Exceptions to the form of an indictment. O. C. 488.

1. That the indictment or information does not appear to have been presented in the proper court, as required by article 439 or 466.

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.

Motions, etc., shall be in writing. O. C. 489.

Art. 566. [530] All motions to set aside an indictment or information, all special pleas and exceptions, shall be in writing.

Two days allowed for filing written pleadings. O. C. 491, 494, 495, 496.

Art. 567. [531] 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.

When defendant is entitled to service of copy of indictment, etc. O. C. 496.

Art. 568. [532] 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.

Defendant may file written pleadings at any time, etc. O. C. 496a.

Art. 569. [533] 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.

Plea of guilty; how made in felony case.

Art. 570. [534] 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 554 and 555.

Plea of guilty in misdemeanor.

Art. 571. [535] 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.

Any person charged with misdemeanor may plead guilty without jury in the county court at special session held for that purpose. (Act April 4, 1891.)

Art. 572. 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 proceeding shall be had to enforce the judgment as in other cases in the county court.

Plea of not guilty, how made. O. C. 480.

Art. 573. [536] 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.

Plea of not guilty, how construed. O. C. 497.

Art. 574. [537] The plea of "not guilty" shall be construed to be a denial of every material allegation in the indictment of information. Under this plea evidence to establish the insanity of the 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 561.

Pleas of guilty and not guilty may be oral, etc.

Art. 575. [538] 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.

VII. OF THE ARGUMENT AND DECISION OF MOTIONS, PLEAS AND EXCEPTIONS.

Motions, etc., to be heard and decided without delay. O. C. 502.

Art. 576. [539] The motion to set aside an indictment or information, and all exceptions, shall be heard together and shall be decided without delay.

Same subject.

Art. 577. [540] 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.

Defendant may open and conclude argument.

Art. 578. [541] 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.

Special pleas setting forth matters of fact. O. C. 503.

Art. 579. [542] 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."

Process to procure testimony on written pleadings. O. C. 503.

Art. 580. [543] 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.

Where motion to set aside, etc., is sustained in misdemeanor. O. C. 504.

Art. 581. [544] 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.

In cases of felony. O. C. 505.

Art. 582. [545] 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.

Shall be fully discharged, when. O. C. 506.

Art. 583. [546] 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.

When exception is that no offense is charged. O. C. 507.

Art. 584. [547] 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.

When defendant is held by order of court, etc., shall be discharged in ten days, unless, etc.

Art. 585. [548] 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.

When exception is on account of form. O. C. 508.

Art. 586. [549] 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.

Amendment of indictment or information.

Art. 587. [550] 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.

Amendments, made how.

Art. 588. [551] All amendments of an indictment or information shall be made with the leave of the court and under its direction.

State may except to plea, etc. O. C. 509, 510.

Art. 589. [552] 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.

Former acquittal or conviction; when a bar and when not a bar.

Art. 590. [553] 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.

Plea of not guilty allowed where motion, etc., has been overruled. O. C. 512.

Art. 591. [554] 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.

VIII. OF CONTINUANCE.

Continuance by operation of law, when. O. C. 513.

Art. 592. [555] 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.

By consent of parties.

Art. 593. [556] A criminal action may be continued by consent of the parties thereto, in open court, at any time.

For sufficient cause shown. O. C. 514, 517, 520.

Art. 594. [557] 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.

First application by the state for a continuance. O. C. 515.

Art. 595. [558] 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 subpoena, 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.

Subsequent application by the state. O. C. 516.

Art. 596. [559] 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.

First application by defendant for a continuance. O. C. 518.

Art. 597. [560] 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 subpoena, 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 the 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.

Subsequent application by defendant. O. C. 516.

Art. 598. [561] 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.

Defendant shall swear to his application. O. C. 521.

Art. 599. [562] All applications for continuance on the part of the defendant must be sworn to by himself.

Written motion not necessary. O. C. 522.

Art. 600. [563] It shall not be necessary to file any written motion for continuance; the motion based upon the written statement may be made orally.

Statements in application may be denied under oath, etc.

Art. 601. [564] 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.

Proceedings when denial is filed.

Art. 602. [565] 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.

No argument heard, unless, etc.

Art. 603. [566] 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.

Defendant in capital case entitled to bail, when, etc. O. C. 524.

Art. 604. [567] If a defendant in a capital case demand a trial, and it appear 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.

Continuance after trial commenced, when. O. C. 526.

Art. 605. [568] 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.

IX. DISQUALIFICATION OF THE JUDGE.

Causes which disqualify judges, etc. (Const., art. 5, §11.)

Art. 606. [569] 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.

Proceedings when judge of district court is disqualified. (Act Aug. 15, 1876, p. 141.)

Art. 607. [570] If a judge of the district court shall be disqualified from sitting in any criminal action pending in his court, no change of venue shall be made necessary thereby; but the parties, or their counsel, shall have the right to select and agree upon an attorney of the court to preside as special judge in the trial thereof.

Should the parties fail to agree.

Art. 608. [571] Should the parties not agree upon an attorney to try the case on or before the day set for the trial of the criminal docket, the district judge shall forthwith certify the facts to the governor, who shall at once appoint some practicing attorney, learned in the law, to try such case.

Special judge shall take oath of office.

Art. 609. [572] 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 case.

When judge of county court is disqualified, etc. (Amend. 1893, p. 83; Const., art. 5, §16.)

Art. 610. [573] 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.

Special judge shall take oath. (Act 1893, p. 83.)

Art. 610a. [573a] 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.

Compensation. Ib.

Art. 610b. [573b] 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.

When a justice of the peace is disqualified.

Art. 611. [574] 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.

What the order of transfer shall state, etc.

Art. 612. [575] 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.

X. CHANGE OF VENUE.

District judge may order change of venue on his own motion, when. (Act Aug. 21, 1876, p. 274.) (Const., art. 5, §45.

Art. 613. [576] 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.

State may have change of venue, when, etc. (Act Aug. 21, 1876, p. 274.)

Art. 614. [577] 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 jeoparded 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.

Change of venue; when granted on application of defendant. O. C. 527.

Art. 615. [578] 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.

Where jury can not be procured for trial of felony. O. C. 528.

Art. 616. [579] 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.

Application may be made before announcing ready for trial, etc. O. C. 592.

Art. 617. [580] 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.

Venue changed to nearest county, unless, etc. O. C. 530.

Art. 618. [581] 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.

Where adjoining counties are all subject to objection, etc. O. C. 531.

Art. 619. [582] 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.

Application for change of venue may be controverted, how.

Art. 620. [583] 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.

Order of judge shall not be revised on appeal, unless, etc.

Art. 621. [584] 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.

Clerks' duties in case of change of venue. O. C. 532.

Art. 622. [585] 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.

Same subject. O. C. 533.

Art. 623. [586] 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.

If defendant is on bail, shall be recognized. O. C. 534.

Art. 624. [587] 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.

Defendant failing to give recognizance shall be kept in custody, etc.

Art. 625. [588] If the defendant fail 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.

If defendant be in custody. O. C. 535.

Art. 626. [589] 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.

If court be in session, etc. O. C. 536.

Art. 627. [590] 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.

Witness need not again be summoned, etc.

Art. 628. [591] When the venue in a criminal action has been changed, it shall not be necessary to have the witnesses therein again subpoenaed, attached or recognized, but all the witnesses who have been subpoenaed, 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.

XI. OF DISMISSING PROSECUTIONS.

Defendant in custody and no indictment presented, prosecution dismissed, unless, etc. O. C. 537.

Art. 629. [592] 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.

Prosecution may be dismissed by state's attorney, etc. O. C. 538.

Art. 630. [593] 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.

TITLE VIII.

Of Trial and Its Incidents.

CHAPTER ONE.

OF THE MODE OF TRIAL.

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Jury the only mode of trial, when. O. C. 539.

Article 631. [594] The only mode of trial upon issue of fact is by jury, unless in cases specially excepted.

Jury; when of 12, when of 6.

Art. 632. [595] 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.

Defendant must be personally present, etc. O. C. 640.

Art. 633. [596] 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.

Defendant may appear by counsel, when, etc. O. C. 541.

Art. 634. [597] 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.

Defendant on bail. O. C. 542.

Art. 635. [598] When the defendant in a case of felony is on bail he shall, before the trial commences, be placed in the custody of the sheriff and his bail be considered as discharged.

Sureties still bound in case of mistrial. O. C. 543.

Art. 636. [599] 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.

Criminal docket shall be kept. O. C. 544.

Art. 637. [600] 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.

District court shall fix a day for criminal docket. O. C. 545.

Art. 638. [601] 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.

County court shall hold a term for criminal business. (Act June 16, 1876, p. 17, §2.)

Art. 639. [602] 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.

Art. 640. [603] 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. Defendant required to plead. O. C. 546.

Art. 641. [604] 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. Meaning of term "called for trial." O. C. 547.

CHAPTER TWO.

OF THE SPECIAL VENIRE IN CAPITAL CASES.

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Article 642. [605] 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. Definition of a special venire. O. C. 548.

Art. 643. [606] 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. State may obtain order for special venire, etc.

Art. 644. [607] 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. Defendant may obtain special venire, when.

Art. 645. [608] 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. Order of the court; writ.

Art. 646. [609] 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. Capital cases may be set for particular day.

Art. 647. [610] Whenever a special venire is ordered, 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. Manner of selecting special venire. (Act Aug. 1, 1876, p. 82, §23.)

In case no jurors, or not a sufficient number.

Art. 648. [611] 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.

Same subject.

Art. 649. [612] 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.

Service of writ.

Art. 650. [613] 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.

Return of writ.

Art. 651. [614] 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.

Sheriff shall be instructed by court as to summoning jurors. O. C. 553.

Art. 652. [615] When the sheriff is ordered by the court to summon persons upon a special venire whose names have not been selected as provided in article 647, the court shall in every such 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.

Copy of list of jurors shall be served on defendant, etc. O. C. 553.

Art. 653. [616] 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.

One day's service of copy before trial. O. C. 554. (Amended by act Feb. 15, 1887, p. 5.)

Art. 654. [617] 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.

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Court may adjourn persons summoned, etc., but jurors, when sworn, should not separate, unless, etc.	680
Persons not selected as jurors shall be discharged	681

Article 655. [618] 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.

In capital cases names of jurors to be called, etc. O. C. 555.

Art. 656. [619] 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."

Shall be sworn to answer questions.

Art. 657. [620] 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.

Excuses heard and determined by court.

Art. 658. [621] 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.

May be excused by consent of parties.

Art. 659. [622] 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.

Challenge to the array may be heard.

Art. 660. [623] 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 willfully summoned jurors with a view to securing an acquittal.

State may challenge array, when. O. C. 568.

Art. 661. [624] The defendant may challenge the array for the following causes only: That the officer summoning the jury has acted corruptly, and has willfully summoned persons upon the jury known to be prejudiced against the defendant with a view to cause him to be convicted.

Defendant may challenge array, when. O. C. 569.

Art. 662. [625] 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.

Two preceding articles do not apply, when.

Art. 663. [626] All challenges to the array must be made in writing, setting forth distinctly the grounds of such challenge, and

Challenge to the array must be in writing, etc.

when made by the defendant it must be supported by his affidavit or the affidavit of some credible person.

Judge shall decide challenge without delay.

Art. 664. [627] When a challange to an array is made the judge shall hear evidence and decide whether the challenge shall be sustained or not, without delay.

Proceedings when such challenge is sustained.

Art. 665. [628] 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.

Defendant entitled to list of persons summoned.

Art. 666. [629] 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.

Court shall proceed to try qualifications of persons summoned.

Art. 667. [630] 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.

Mode of testing qualifications.

Art. 668. [631] In testing the qualifications of a juror, he having first been sworn as provided in article 656, 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.

When held to be qualified, etc.

Art. 669. [632] 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.

Two kinds of challenges. O. C. 570.

Art. 670. [633] Challenges to individual jurors are of two kinds, peremptory and for cause.

A peremptory challenge. O. C. 571.

Art. 671. [634] A peremptory challenge is made to a juror without assigning any reason therefor.

Number of challenges in capital cases. O. C. 572.

Art. 672. [635] In capital cases the defendant shall be entitled to twenty peremptory challenges and the state to ten, and where there are more defendants than one tried together, each defendant shall be entitled to twelve peremptory challenges, and the state to six for each defendant.

A challenge for cause may be made for what reason. O. C. 575.

Art. 673. [636] 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.

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 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 be first asked whether, in his opinion, the conclusion so established will influence his verdict. If he answer in the affirmative, he shall be discharged; if he answer in the negative, he shall be further examined by the court, or under its sanction, 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 from 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.

Art. 674. [637] 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. Other evidence may be heard. O. C. 577.

Art. 675. [638] In examining a juror he shall not be asked a question, the answer to which may show that he has been convicted of an offense which disqualifies him, or that he stands charged by indictment or other legal accusation with theft or any felony. Juror shall not be asked certain questions. O. C. 577.

Art. 676. [639] 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. No juror shall be impaneled, when.

Art. 677. [640] 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. Names of persons summoned shall be called in their order. O. C. 556-558.

Art. 678. [641] 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. Judge shall decide qualifications of juror, etc. O. C. 579.

Art. 679. [642] 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 Oath to be administered to each juror. O. C. 563.

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."

Court may adjourn persons summoned, etc., but jurors, when sworn, shall not separate, unless, etc. O. C. 605.

Art. 680. [643] 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.

Persons not selected shall be discharged.

Art. 681. [644] 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.

CHAPTER FOUR.

OF THE FORMATION OF THE JURY IN CASES LESS THAN CAPITAL.

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Duty of clerk when parties are ready for trial. (Act Aug. 1, 1876, p. 82, §21.)

Article 682. [645] 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.

Same subject. Ib. §22.

Art. 683. [646] 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.

When other jurors to be summoned.

Art. 684. [647] 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.

Challenge for cause to be made, when.

Art. 685. [648] 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.

When number is reduced, etc., by challenge, others to be drawn, etc.

Art. 686. [649] 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.

Cause for challenge same as in capital cases, except, etc.

Art. 687. [650] The challenges for cause in all criminal actions are the same as provided in capital cases in article 673, except cause 11 in said article, which is applicable to capital cases only.

Peremptory challenge to be made, when.

Art. 688. [651] 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.

In felonies not capital, number of challenges. O. C. 573.

Art. 689. [652] In prosecutions for felonies not capital the defendant shall be entitled to ten peremptory challenges and the state to five, and where more defendants than one are tried together, each defendant shall be entitled to six peremptory challenges and the state to three for each defendant.

In misdemeanors. O. C. 574.

Art. 690. [653] 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.

Manner of making peremptory challenge. (Act Aug. 1, 1876, p. 82.)

Art. 691. [654] 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.

Lists shall be returned to clerk, when. Ib.

Art. 692. [655] 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.

When jury is left incomplete, court shall direct, etc.

Art. 693. [656] 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.

Oath to be administered to jurors. O. C. 563.

Art. 694. [657] 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."

When there are no regular jurors, court shall order jurors to be summoned.

Art. 695. [658] 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.

Array may be challenged as in capital cases.

Art. 696. [659] 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.

CHAPTER FIVE.

OF THE TRIAL BEFORE THE JURY.

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Order of proceeding in trial. O. C. 580.

Article 697. [660] 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.

Testimony allowed at any time before argument. O. C. 581.

Art. 698. [661] 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.

Witnesses placed under rule. O. C. 582.

Art. 699. [662] 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.

Witnesses under rule kept separate, or, etc. O. C. 583.

Art. 700. [663] 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.

Part of witnesses may be placed under rule.

Art. 701. [664] 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.

When under rule, shall be attended by an officer.

Art. 702. [665] Witnesses under rule shall be attended by an officer and all their reasonable wants provided for, unless the court in its discretion direct 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.

Shall be instructed by the court, etc.

Art. 703. [666] 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.

Order of argument. O. C. 585.

Art. 704. [667] 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.

In prosecutions for felony. O. C. 586.

Art. 705. [668] In prosecutions for felony the court shall never restrict the argument to a less number of addresses than two on each side.

Defendant's right to sever on trial. O. C. 587.

Art. 706. [669] When two or more defendants are jointly prosecuted they may sever in the trial upon the request of either.

Same subject. (Act March 21, 1887, p. 33.)

Art. 707. [669a] 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.

Order in which they will be tried, etc.

Art. 708. [670] 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.

May dismiss as to one who may be witness. O. C. 588.

Art. 709. [671] 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.

Where there is no evidence against a defendant jointly prosecuted. O. C. 589.

Art. 710. [672] 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.

When it appears the court has no jurisdiction. O. C. 590.

Art. 711. [673] 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.

In such case court may commit, when. O. C. 591.

Art. 712. [674] 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.

Defendant shall be discharged in all cases, when. O. C. 590-592.

Art. 713. [675] 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 711, 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.

The jury are judges of fact. O. C. 593.

Art. 714. [676] 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.

Charge of court to the jury. O. C. 594.

Art. 715. [677] After the argument of any criminal cause has been concluded, the judge shall 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 evidence, nor shall he sum up the testimony. This charge shall be given in all cases of felony, whether asked or not.

Charge shall not discuss the facts, etc. O. C. 595.

Art. 716. [678] 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.

Either party may ask written instructions. O. C. 596.

Art. 717. [679] After or before the charge of the court to the jury the counsel on both sides may present written instructions and ask that they be given to the jury. The court shall either 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.

Charges shall be certified by judge. O. C. 595.

Art. 718. [680] 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.

No charge in misdemeanor, except, etc. O. C. 598.

Art. 719. [681] 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.

No verbal charge, except, etc.

Art. 720. [682] No verbal charge shall be given in any case whatever, except in cases of misdemeanor, and then only by consent of the parties.

Judge shall read to jury, what. O. C. 600.

Art. 721. [683] When charges are asked the judge shall read to the jury only such as he gives.

Jury may take charge with them. O. C. 601.

Art. 722. [684] 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.

Judgment will be reversed on appeal, when, etc. O. C. 602.

Art. 723. [685] Whenever it appears by the record in any criminal action, upon appeal of the defendant, that any of the require-

ments of the eight preceding articles have been disregarded, the judgment shall be reversed; provided, the error is excepted to at the time of the trial.

Bill of exceptions. O. C. 603.

Art. 724. [686] 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.

Jury in felony case shall not separate until, unless, etc. O. C. 605.

Art. 725. [687] 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.

In misdemeanor case jury may separate.

Art. 726. [688] 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.

Sheriff may provide jury with, etc. O. C. 606.

Art. 727. [689] 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.

No person shall be with jury or permitted to converse with them, etc. O. C. 607.

Art. 728. [690] 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.

Punishment for violation of preceding article.

Art. 729. [691] Any juror or other person violating the preceding article shall be punished for contempt of court by fine not exceeding one hundred dollars.

Officer shall attend jury. O. C. 608, 609.

Art. 730. [692] 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.

Jury shall take all papers in the case. O. C. 610.

Art. 731. [693] 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.

Foreman appointed. O. C. 611.

Art. 732. [694] The jury, in all cases, shall appoint one of their body foreman, in order that their deliberations may be conducted with regularity and order.

Jury may communicate with the court. O. C. 612, 613.

Art. 733. [695] 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.

Jury may ask further instruction. O. C. 614.

Art. 734. [696] 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.

Jury may have witness re-examined, when. O. C. 615.

Art. 735. [697] 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.

Defendant shall be present, when. O. C. 617.

Art. 736. [698] 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.

If a juror become sick after retirement. O. C. 618.

Art. 737. [699] If, after the retirement of the jury, in a felony case, any one of them become so sick as to prevent the continuance of his duty, or any accident or circumstance occur to prevent their being kept together, the jury may be discharged.

In misdemeanor case in district court. (Const., art. 5, §13.) (Act Aug. 1, 1876, p. 82, §19.)

Art. 738. [700] 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.

Disagreement of jury. O. C. 619.

Art. 739. [701] 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.

Final adjournment discharges jury. O. C. 620.

Art. 740. [702] A final adjournment of the court, before the jury have agreed upon a verdict, discharges them.

If no verdict, cause may be again tried, etc. O. C. 621.

Art. 741. [703] 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.

Court may proceed with other business. O. C. 622.

Art. 742. [704] The court may, during the retirement of the jury, proceed to any other business and adjourn from time to time, but shall be deemed open for all purposes connected with the case before the jury.

CHAPTER SIX.

OF THE VERDICT.

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Definition of verdict.

Article 743. [705] 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.

In felony case twelve jurors must concur, etc.

Art. 744. [706] Not less than twelve jurors can render and return a verdict in a felony case, and the verdict shall be signed by the foreman.

When nine jurors may render verdict, etc. (Act Aug. 1, 1876, p. 12, §19.)

Art. 745. [707] 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.

Six jurors in county court.

Art. 746. [708] 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.

When jury have agreed, etc. O. C. 623.

Art. 747. [709] 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.

Polling the jury. O. C. 624.

Art. 748. [710] 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.

Defendant must be present, when. O. C. 625.

Art. 749. [711] In cases of felony the defendant must be present when the verdict is read, unless he escape after the commencement of the trial of the cause; but in cases of misdemeanor it may be received and read in his absence.

Verdict must be general. O. C. 626.

Art. 750. [712] 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.

When offense of different degree is charged. O. C. 630.

Art. 751. [713] 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.

Offenses consisting of degrees. O. C. 631.

Art. 752. [714] 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, embezzlement, 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. Kidnaping 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.

Informal verdict may be corrected. O. C. 627.

Art. 753. [715] 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.

If jury refuse to have verdict corrected. O. C. 628.

Art. 754. [716] 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.

Where several defendants are tried jointly. O. C. 632.

Art. 755. [717] Where several defendants are tried together, the jury may convict such of the defendants as they deem guilty and acquit others.

Same subject. O. C. 633.

Art. 756. [718] 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.

In case of acquittal. O. C. 635.

Art. 757. [719] 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.

Judgment entered immediately. O. C. 634.

Art. 758. [720] In every case of acquittal or conviction the proper judgment shall be entered immediately.

When verdict of guilty in felony. O. C. 634.

Art. 759. [721] 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.

Acquittal for insanity. O. C. 636.

Art. 760. [722] When the defendant is acquitted on the ground of insanity, the jury shall so state in their verdict.

Verdict on plea of guilty by person insane. O. C. 637.

Art. 761. [723] 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 twelve, chapter one, of this Code.

Art. 762. [724] 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.

Conviction of lower is acquittal of higher offense. O. C. 642.

CHAPTER SEVEN.

OF EVIDENCE IN CRIMINAL ACTIONS.

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I. GENERAL RULES.

Article 763. [725] 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.

Rules of common law shall govern, except, etc. O. C. 638.

Art. 764. [726] 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.

Rules of statute shall govern, when. O. C. 639.

Art. 765. [727] 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.

Defendant presumed to be innocent; reasonable doubt. O. C. 640.

Art. 766. [728] 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.

Jury are the judges of facts. O. C. 643.

Judge shall not discuss evidence offered, etc.

Art. 767. [729] 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.

II. OF PERSONS WHO MAY TESTIFY.

Persons incompetent to testify. O. C. 644.

Art. 768. [730] 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.

Female alleged to be seduced may testify. (Act 22d Leg., ch. 33, p. 34.)

Art. 769. 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.

Defendant may testify. (Act 21st Leg., April 4, 1889.)

Art. 770. 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.

Principals, accomplices and accessories. O. C. 230.

Art. 771. [731] 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.

Court may interrogate witness touching competency. O. C. 645.

Art. 772. [732] 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.

All other persons competent witnesses. O. C. 646.

Art. 773. [733] All other persons except those enumerated in articles 768 and 775, 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.

Husband and wife shall not testify as to, etc. O. C. 647.

Art. 774. [734] 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.

Same subject. O. C. 648.

Art. 775. [735] 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.

Religious opinion, etc., does not disqualify. (Bill of Rights §5.)

Art. 776. [736] No person is incompetent to testify on account of his religious opinion or for the want of any religious belief.

Defendant jointly indicted may testify, when.

Art. 777. [737] 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.

Judge of the court is a competent witness. O. C. 650.

Art. 778. [738] 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.

Judge not required to testify, when. O. C. 651.

Art. 779. [739] 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.

Oath administered to the judge by the clerk. O. C. 652.

Art. 780. [740] When the judge of a court is offered as a witness, the oath may be administered to him by the clerk.

Testimony of accomplice not sufficient to convict, unless, etc. O. C. 653.

Art. 781. [741] 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.

In trials for forgery, etc. O. C. 658.

Art. 782. [742] 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.

III. EVIDENCE AS TO PARTICULAR OFFENSES.

Must be two witnesses, etc., in treason, or, etc. O. C. 654.

Art. 783. [743] 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.

What evidence not admitted in treason, etc. O. C. 655.

Art. 784. [744] 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.

In case where two witnesses are required. O. C. 656.

Art. 785. [745] 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.

Perjury and false swearing; two witnesses, etc., required. O. C. 657.

Art. 786. [746] 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.

Proof of intent to defraud in forgery. O. C. 659.

Art. 787. [747] 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.

IV. OF DYING DECLARATIONS AND OF CONFESSIONS OF THE DEFENDANT.

Dying declarations evidence, when. O. C. 660.

Art. 788. [748] 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.

Confession of defendant. O. C. 661.

Art. 789. [749] 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.

When confession shall not be used. O. C. 662.

Art. 790. [750] 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 such confession be made in the voluntary statement of the accused, taken before an examining court in accordance with law, or be made voluntarily after having been first cautioned that it may be used against him, or unless in connection with such confession he make statement of facts or of circumstances that are found to be true, which conduce to establish his guilt, such as the finding of secreted or stolen property, or instrument with which he states the offense was committed.

V. MISCELLANEOUS PROVISIONS.

When part of an act, declaration, etc., is given in evidence. O. C. 664.

Art. 791. [751] 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.

Written part of an instrument shall control, etc. O. C. 665.

Art. 792. [752] When an instrument is partly written and partly printed the written shall control the printed portion when the two are inconsistent.

When subscribing witness denies execution, etc., of instrument. O. C. 666.

Art. 793. [753] 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.

Art. 794. [754] 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.

Evidence of handwriting by comparison. O. C. 667.

Art. 795. [755] The rule that a party introducing a witness shall not attack his testimony is so far modified as that any party, when facts stated by the witness are injurious to his cause, may attack his testimony in any other manner, except by proving the bad character of the witness.

Party may attack testimony of his own witness, when and how. O. C. 668.

Art. 796. [756] When a witness does not understand and speak the English language, an interpreter must be sworn to interpret for him. Any person may be subpoenaed, 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.

Interpreter shall be sworn to interpret, when.

CHAPTER EIGHT.

OF THE DEPOSITIONS OF WITNESSES AND TESTIMONY TAKEN BEFORE EXAMINING COURTS AND JURIES OF INQUEST.

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Article 797. [757] 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.

Defendant may have deposition taken when examination, etc. O. C. 764.

Art. 798. [758] 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.

May also be taken, when. O. C. 765.

Art. 799. [759] 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.

Depositions within the state, taken by whom. O. C. 766.

Art. 800. [760] 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.

May be taken out of the state, by whom. O. C. 767.

Depositions of non-resident witness temporarily within the state. O. C. 768.

Art. 801. [761] 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.

Shall be taken as in civil cases. O. C. 769.

Art. 802. [762] 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.

Same objections to depositions as in civil cases. O. C. 770.

Art. 803. [763] 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.

How defendant shall proceed in taking depositions. O. C. 771.

Art. 804. [764] 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.

Written interrogatories filed, etc., as in civil cases. O. C. 765.

Art. 805. [765] 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.

Certificate of officer taking deposition. O. C. 773.

Art. 806. [766] 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.

Where two officers act, each shall sign and seal. O. C. 774.

Art. 807. [767] 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.

Deposition before examining court, taken how. O. C. 775.

Art. 808. [768] 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.

May be taken without commission. O. C. 776.

Art. 809. [769] 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.

Duty of officer to attend. O. C. 777.

Art. 810. [770] 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.

How deposition shall be returned. O. C. 778.

Art. 811. [771] 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.

Depositions shall not be read, unless oath be made that, etc. O. C. 779.

Art. 812. [772] 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.

District or county attorney may make oath. O. C. 780.

Art. 813. [773] 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.

Testimony taken before examining court may be read in evidence, when. (Act Nov. 10, 1866, p. 160.)

Art. 814. [774] 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.

TITLE IX.

Of Proceedings After Verdict.

CHAPTER ONE.

OF NEW TRIALS.

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Definition of "new trial." O. C. 669.

Article 815. [775] A new trial is the rehearing of a criminal action, after verdict, before the judge or another jury, as the case may be.

Granted only to a defendant. O. C. 670.

Art. 816. [776] A new trial can in no case be granted where the verdict or judgment has been rendered for the defendant.

New trial in felony cases granted, for what causes. O. C. 672.

Art. 817. [777] 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.

In misdemeanors, granted, when.

Art. 818. [778] New trials, in cases of misdemeanor, may be granted for any of the causes specified in the preceding article, except that contained in subdivision one of said article.

Must be applied for within two days, except.

Art. 819. [779] 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.

Motions for new trial shall be in writing.

Art. 820. [780] All motions for new trials shall be in writing, and shall set forth distinctly the grounds upon which the new trial is asked.

State may controvert truth of causes set forth, etc.

Art. 821. [781] 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.

Judge shall not discuss the evidence, etc.

Art. 822. [782] 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.

Effect of a new trial. O. C. 674.

Art. 823. [783] 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 conviction shall be regarded as no presumption of guilt, nor shall it be alluded to in the argument.

When new trial is refused, statement of facts, etc. O. C. 673.

Art. 824. [784] If a new trial be refused, a statement of facts may be drawn up and certified and placed in 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.

CHAPTER TWO.

ARREST OF JUDGMENT.

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Definition of "motion in arrest of judgement." O. C. 675.

Article 825. [785] 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.

Must be made in two days, etc. O. C. 676.

Art. 826. [786] 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.

Shall be granted for what cause. O. C. 678.

Art. 827. [787] 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.

Shall not be, etc. O. C. 679.

Art. 828. [788] No judgment shall be arrested for want of form.

Effect of arresting a judgment. O. C. 680.

Art. 829. [789] 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.

Court may discharge defendant, when. O. C. 681.

Art. 830. [790] 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.

CHAPTER THREE.

JUDGMENT AND SENTENCE.

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I. IN CASES OF FELONY.

Definition of "judgment."

Article 831. [791] 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.

Definition of "sentence."

Art. 832. [792] 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.

Judgment and sentence, when. O. C. 682.

Art. 833. [793] 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.

In cases of appeal, sentence shall be pronounced. O. C. 683.

Art. 834. [794] 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.

Where two days do not intervene before adjournment. O. C. 684.

Art. 835. [795] 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.

Same subject. O. C. 685.

Art. 836. [796] 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 district 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.

Where there has been a failure to enter judgment. O. C. 686.

Art. 837. [797] 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.

Before sentence, defendant shall be asked, etc. O. C. 687.

Art. 838. [798] 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.

Reasons which will prevent the sentence. O. C. 688.

Art. 839. [799] 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.

Two or more convictions of same defendant at same term. (Amended by Act Feb. 12, 1883, p. 8.)

Art. 840. [800] 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 rendered and pronounced in each case in the same manner as if there had been but one conviction, except that the judgment in the second and subsequent convictions shall be, that the punishment shall begin when the judgment and sentence in the preceding conviction have ceased to operate, and the sentence and execution thereof shall be accordingly.

Sentence of death. O. C. 689.

Art. 841. [801] 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.

Warrant for execution of death penalty. O. C. 690.

Art. 842. [802] 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.

Another warrant may issue, when.

Art. 843. [803] 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.

II. JUDGMENT IN CASES OF MISDEMEANOR.

May be rendered in absence of defendant. O. C. 691.

Art. 844. [804] The judgment in cases of misdemeanor may be rendered in the absence of the defendant.

Judgment when the punishment is fine only.

Art. 845. [805] 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.

Judgment when the punishment is other than fine.

Art. 846. [806] 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.

CHAPTER FOUR.

EXECUTION OF JUDGMENT.

Article

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Sheriff shall return the warrant, stating, etc. 870

I. COLLECTION OF PECUNIARY FINES.

How judgment for fine satisfied and defendant discharged.

Article 847. [807] 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.

Recognizances, etc., payable in lawful money. O. C. 702.

Art. 848. [808] 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.

When judgment is fine and defendant is present. O. C. 694, 695.

Art. 849. [809] 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 845, and a certified copy of such judgment shall be sufficient to authorize such imprisonment without further warrant or process.

When defendant is not present, capias shall issue.

Art. 850. [810] 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.

Capias shall recite, what. O. C. 700.

Art. 851. [811] 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.

Capias may issue to any county in the state, etc.

Art. 852. [812] 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.

Execution may issue for fine and costs. O. C. 695.

Art. 853. [813] 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, not-

withstanding an execution has been issued against his property. The execution shall be collected and returned as in civil actions.

When execution is satisfied, etc.

Art. 854. [814] 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.

Further enforcement of the judgment.

Art. 855. [815] 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.

Judgment for fine, etc., may be discharged by imprisonment, when. O. C. 694, 848. (Amended.)

Art. 856. [816] When a defendant is convicted of a misdemeanor, and his punishment is assessed at a pecuniary fine, if he make 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 the fine and costs adjudged against him, rating such punishment at three dollars for each day thereof.

II. ENFORCING JUDGMENT IN MISDEMEANORS WHERE THE PUNISHMENT IS IMPRISONMENT.

Copy of judgment sufficient authority for imprisonment. O. C. 704.

Art. 857. [817] When, by the judgment of the court, a defendant is to be imprisoned in jail, the sheriff 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.

Capias, when punishment is imprisonment. O. C. 705.

Art. 858. [818] 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.

Defendant shall be discharged, when.

Art. 859. [819] 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.

Further execution of judgment, etc.

Art. 860. [825] 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.

III. ENFORCING JUDGMENT IN CAPITAL CASES.

Death warrant to be executed, when. O. C. 708.

Art. 861. [826] 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.

Executed, how. O. C. 709.

Art. 862. [827] The sentence of death shall be executed by hanging the convict by the neck until he is dead.

Art. 863. [828] 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. Shall take place within the walls of the jail, when. O. C. 710.

Art. 864. [829] 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. Who shall be present. O. C. 711.

Art. 865. [830] 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. Reasonable request of convict. O. C. 712.

Art. 866. [831] No torture, or ill-treatment, or unnecessary pain shall be inflicted upon a prisoner to be executed under the sentence of the law. No torture shall be inflicted. O. C. 713.

Art. 867. [832] 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. Sheriff may order military company to aid. O. C. 715.

Art. 868. [833] 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. When execution can not take place in jail.

Art. 869. [834] 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. Body of convict shall be buried, how. O. C. 716.

Art. 870. [835] The sheriff shall immediately return the warrant, stating in his return, indorsed thereon, or attached thereto— Sheriff shall return the warrant, stating, etc. O. C. 717.

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.

TITLE X.

Appeal and Writ of Error.

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State can not appeal. (Const., art. 5, §26.)

Article 871. [836] The state shall have no right of appeal in criminal actions.

Defendant may appeal.

Art. 872. [837] A defendant in any criminal action, upon conviction, has the right of appeal under the rules hereinafter prescribed.

Appeals from district and county courts. (Acts 22d Leg., S. S.)

Art. 873. [838] Appeals from judgments rendered by the district or county court in criminal actions shall be heard by the court of criminal appeals.

From justices of the peace to county court.

Art. 874. [839] 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.

Defendant need not be present. (Acts 22d Leg., S. S.)

Art. 875. [840] 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.

In felony cases defendant placed in jail. Ib.

Art. 876. [841] Where the defendant appeals in any case of felony he shall be committed to jail until the decision of the court of criminal appeals can be made and received.

If no jail in county, etc.

Art. 877. [842] 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.

Appeal in felony cases prosecuted immediately. (Acts 22d Leg., S. S.)

Art. 878. [843] 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, wherever it may be in session, or if not in session to the clerk of said court where it will next be in session, a transcript of the case.

When transcript may be filed.

Art. 879. [844] 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.

When defendant escapes pending an appeal.

Art. 880. [845] 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.

Sheriff shall report escape, etc.

Art. 881. [846] 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.

Appeal may be taken, when. O. C. 725.

Art. 882. [847] An appeal may be taken by the defendant at any time during the term of the court at which the conviction is had.

Appeal is taken, how. O. C. 726.

Art. 883. [848] An appeal is taken by giving notice thereof in open court, and having the same entered of record.

Effect of appeal. O. C. 727.

Art. 884. [849] 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.

Appeal in felony case after sentence. O. C. 728.

Art. 885. [850] 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.

When defendant appeals in misdemeanor, must give recognizance. O. C. 722.

Art. 886. [851] 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 to appear as hereinafter required; and if he be not in custody, his notice of appeal shall have no effect whatever until he enter into recognizance.

Form of recognizance. (Acts 22d Leg S. S., ch. 16.)

Art. 887. [852] In appeals of cases of misdemeanor the following form of recognizance shall be considered sufficient:

"State of Texas
vs. } No.——
A B

"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 stands charged in this court with the offense of——, and who has been convicted of said offense in this court, 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.

Appeal shall not be entertained without sufficient recognizance.

Art. 888. [853] 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.

Appeals from justices' and other inferior courts. (Act Aug. 17, 1876, p. 167, §§37, 38.)

Art. 889. [854] 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 the fines and costs adjudged against him; conditioned, that he shall prosecute his appeal with effect, and shall pay such fine and costs as shall be adjudged against him by the county court, as well as other costs that may have been adjudged against him in the court below.

Appeal bond shall be given within what time.

Art. 890. [855] 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.

Trial in county court shall be de novo. (Const., art. 5, §16.)

Art. 891. [856] 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.

Original papers, etc., shall be sent up.

Art. 892. [857] 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 pro-

ceedings 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.

Witnesses need not be again summoned, etc.

Art. 893. [858] 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.

Rules governing the taking etc., of appeal bonds.

Art. 894. [859] 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.

Clerk shall prepare transcript in all cases appealed. O. C. 729.

Art. 895. [860] 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.

Transcript in felony case to be prepared first. O. C. 729.

Art. 896. [861] 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.

Transcript in felony cases, how forwarded. (Acts 22d Leg., ch. 16, §34.)

Art. 897. [862] As soon as a transcript is prepared the clerk shall forward the same by mail or other safe conveyance, charges paid, enclosed in an envelope, securely sealed, directed to the proper clerk of the court of criminal appeals.

Clerk to make certified list of certain cases. Ib. §35.

Art. 898. [863] 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 at the proper place.

Certificate to be filed. Ib. §36.

Art. 899. [864] 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.

Notice to clerk as to transcripts. Ib. §37.

Art. 900. [865] 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.

Same subject. Ib. §38.

Art. 901. [866] 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.

Clerk to file and docket appeals, when. Ib. §39.

Art. 902. [867] 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.

Appeals, when to be determined. Ib. §40.

Art. 903. [868] 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.

Judgment on appeal. Ib. §41.

Art. 904. [869] 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. In all criminal cases by it decided the court of criminal appeals shall deliver a written opinion setting forth the reason for the decision.

Cases remanded, when Ib. §42.

Art. 905. [870] 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 a new trial.

Duty of clerk after judgment. Ib. §43.

Art. 906. [871] 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.

Mandate to be filed. Ib. §44.

Art. 907. [872] 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.

Sentence shall be pronounced in felony case, when. O. C. 747.

Art. 908. [873] 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.

Same subject. O. C. 748.

Art. 909. [874] 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.

In cases of misdemeanor, when judgment has been affirmed. O. C. 749.

Art. 910. [875] 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.

New trial. (Acts 22d Leg., S. S., ch. 16, §45.)

Art. 911. [876] 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.

Motion in arrest of judgment. Ib. §46.

Art. 912. [877] 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.

Art. 913. [878] 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. Defendant may be discharged, when. Ib. §47.

Art. 914. [879] 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. When felony case is reversed, etc. Ib. §48.

Art. 915. [880] 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. May make rules. Ib. §49.

Art. 916. [881] 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. Appeal in habeas corpus. Ib. §50.

Art. 917. [882] The defendant need not be personally present upon the hearing of an appeal in case of habeas corpus. Defendant need not be present. Ib. §51.

Art. 918. [883] Cases of habeas corpus taken to the court of criminal appeals, by appeal, shall be heard at the earliest practicable time. Habeas corpus, when heard. Ib. §52.

Art. 919. [884] The appeal in a habeas corpus case shall be heard and determined upon the law and the facts arising upon the 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. Shall be heard upon the record, etc. O. C. 755, 756.

Art. 920. [885] 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. Orders in the case. (Acts 22d Leg., S. S., ch. 16, §53.)

Art. 921. [886] 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. Judgment conclusive. Ib. §54.

Art. 922. [887] 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. Officer failing to obey mandate. Ib. §55.

Art. 923. [888] 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. When appellant is detained by other than officer. Ib. §56.

Judgment to be certified, etc. Ib. §57.

Art. 924. [889] 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.

Who shall take bail bond. Ib. §58.

Art. 925. [890] 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.

Appeal from judgment on recognizance, etc. O. C. 738a.

Art. 926. [891] 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.

Defendant entitled also to writ of error. O. C. 738b.

Art. 927. [892] 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.

Same rules govern as in civil cases. O. C. 738a.

Art. 928. [893] 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 is sued out.

TITLE XI.

Of Proceedings in Criminal Actions Before Justices of the Peace, Mayors and Recorders.

CHAPTER ONE.

GENERAL PROVISIONS.

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Justices, etc., shall file transcript of docket with clerk of district court, etc.	935

Mayors shall exercise criminal jurisdiction. O. C. 813.

Article 929. [894] 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.

Mayors or recorders governed by same rules as justices of the peace. O. C. 814.

Art. 930. [895] 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.

Mayors and justices of the peace have concurrent jurisdiction. (Acts 1879, extra session, ch. 19.)

Art. 931. [896] 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.

Warrant issued by mayor, directed to whom.

Art. 932. [897] 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.

Warrant issued by mayor, etc., may be executed, where.

Art. 933. [898] 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.

Justices, etc., shall keep a criminal docket, which shall show, etc. O. C. 817. (Act Aug. 17, 1876, p. 156, §5.)

Art. 934. [899] 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.

Justices, etc., shall file transcript of docket with clerk of district court, etc.

Art. 935. [900] 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.

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OF THE ARREST OF THE DEFENDANT.

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Where an offense has been committed in another county, etc	945

Warrant may issue without complaint, when. O. C. 819.

Article 936. [901] 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.

When complaint is made, shall be reduced to writing, etc. (Act Aug. 17, 1876, p. 165, §29.)

Art. 937. [902] 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.

What the complaint must state.
Ib.

Art. 938. [903] 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.

Warrants shall issue, when.
Ib.
O. C. 821.

Art. 939. [904] 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.

Requisites of warrant of arrest.
Ib.
O. C. 821.

Art. 940. [905] 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.

Justices may summon witnesses to disclose crime, etc.
Ib. §31.

Art. 941. [906] 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.

Witnesses may be fined, etc., for refusing to make statements, etc.
Ib. §32.

Art. 942. [907] 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.

How warrant is executed.
O. C. 822.

Art. 943. [908] 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.

Any person may be authorized to execute warrant.
(Act Aug. 17, 1876, p. 166, §33.)

Art. 944. [909] 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.

Where an offense has been committed in another county, etc.
Ib. §39.

Art. 945. [910] 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.

CHAPTER THREE.

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Justice shall try cause without delay.
O. C. 823.

Article 946. [911] 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.

Defendant may waive trial by jury.

Art. 947. [912] 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.

Jury shall be summoned, if defendant does not waive same.
O. C. 826.
(Act Aug. 17, 1876, p. 167, §3.)

Art. 948. [913] 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.

Juror may be fined, etc.
O. C. 826.

Art. 949. [914] Any person summoned as juror who fails to attend may be fined by the justice as for contempt, not exceeding twenty dollars.

Complaint, etc., shall be read to defendant.
O. C. 824.

Art. 950. [915] 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.

Defendant shall not be discharged by reason of informality, etc.
O. C. 825.

Art. 951. [916] 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.

Art. 952. [917] 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. Challenge of jurors. (Act Aug. 17, 1876, p. 160, §12.)

Art. 953. [918] 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. Other jurors shall be summoned, when. Ib. §12.

Art. 954. [919] 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." Oath to be administered to jury. Ib. §13. O. C. 834.

Art. 955. [920] 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. Defendant shall plead, etc. O. C. 829.

Art. 956. [921] The only special plea allowed is that of former acquittal or conviction for the same offense. The only special plea. O. C. 830.

Art. 957. [922] 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. Pleadings are oral. O. C. 831.

Art. 958. [923] 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. Proceedings upon plea of guilty. O. C. 832.

Art. 959. [924] If the defendant refuse to plead, the justice shall enter the plea of "not guilty," and the cause proceed accordingly. When defendant refuses to plead, etc. O. C. 833.

Art. 960. [925] 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. Witnesses examined by whom. O. C. 835.

Art. 961. [926] 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. Defendant may appear by counsel; argument of counsel. O. C 836.

Art. 962. [927] 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. Rules of evidence. O. C. 837.

Art. 963. [928] 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. Jury shall be kept together till they agree. O. C. 838.

Art. 964. [929] 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. If the jury fail to agree, shall be discharged. O. C. 839.

Art. 965. [930] 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. When court adjourns, the defendant shall enter into bail. O. C. 840.

Art. 966. [931] 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. When the jury have agreed upon a verdict. O. C. 842.

Art. 967. [932] The justice shall enter the verdict upon his docket and render the proper judgment thereon. Justice shall enter verdict. O. C. 843.

Defendant may be placed in jail, when. O. C. 844.

Art. 968. [933] 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.

New trial may be granted defendant. (Act Aug. 17, 1876, p. 176, §17.)

Art. 969. [934] 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.

Application must be made in one day.

Art. 970. [935] 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.

When new trial is granted, another trial without delay.

Art. 971. [936] When a new trial has been granted the justice shall proceed, as soon as practicable, to try the case again.

Only one new trial shall be granted.

Art. 972. [937] Not more than one new trial shall be granted the defendant in the same case.

State not entitled to new trial.

Art. 973. [938] The state shall in no case be entitled to a new trial.

Notice of appeal.

Art. 974. [939] When a defendant appeals from a judgment in a criminal action he shall give notice of such appeal in open court, and the justice shall enter such notice upon his docket.

Effect of appeal.

Art. 975. [940] 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.

Judgments, etc., shall be in open court. (Act Aug. 17, 1876, p. 162, §17.)

Art. 976. [941] 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.

CHAPTER FOUR.

THE JUDGMENT AND EXECUTION.

	Article		Article
The judgment	977	Defendant may be discharged from jail, how	980
Capias for defendant, when	978	Peace officer bound to execute process	981
Execution shall issue	979		

The judgment. O. C. 845.

Article 977. [942] 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.

Capias for defendant, when.

Art. 978. [943] 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.

Execution shall issue. O. C. 849.

Art. 979. [944] 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.

Defendant may be discharged from jail, how.

Art. 980. [945] 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.

Art. 981. [946] Every peace officer is bound to execute all process directed to him from a justice of the peace.

Peace officer bound to execute process. O. C. 850.

TITLE XII.

Miscellaneous Proceedings.

CHAPTER ONE.

OF INQUIRIES AS TO THE INSANITY OF THE DEFENDANT AFTER CONVICTION.

	Article		Article
Insanity after conviction	982	Court shall commit insane defendant, etc.	989
Information as to insanity of defendant.	983	Shall be confined in lunatic asylum until, etc	990
Jury must try question of insanity	984	When the defendant becomes sane	991
Defendant's counsel may open and conclude	985	Affidavit of sanity of defendant	992
Court shall appoint counsel, when	986	Proceedings upon affidavit	993
No special formality required on trial	987	When defendant is again found to be insane	994
When defendant is found insane, further proceedings suspended until, etc	988	Conviction shall be enforced, when	995

Insanity after conviction. O. C. 781.

Article 982. [947] 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.

Information as to insanity of defendant. O. C. 782.

Art. 983. [948] 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.

Court shall impanel jury. O. C. 783.

Art. 984. [949] For the purpose of trying the question of insanity the court shall impanel a jury as in the case of a criminal action.

Defendant's counsel may open, etc. O. C. 786.

Art. 985. [950] The counsel for the defendant has the right to open and conclude the argument upon the trial of an issue as to insanity.

Court shall appoint counsel, when. O. C. 787.

Art. 986. [951] If the defendant has no counsel the court shall appoint counsel to conduct the trial for him.

No special formality required on trial. O. C. 784.

Art. 987. [952] No special formality is necessary in conducting the proceedings authorized by this chapter. The court shall see that the inquiry is conducted in such a manner as to lead to a satisfactory conclusion.

When defendant is found insane. O. C. 788, 789.

Art. 988. [953] 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.

Court shall commit insane defendant, etc. O. C. 793.

Art. 989. [954] 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.

Shall be confined in lunatic asylum until, etc.

Art. 990. [955] 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.

When the defendant becomes sane.

Art. 991. [956] 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.

Affidavit of sanity of the defendant.

Art. 992. [957] 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 the lunatic asylum, by the affidavit, in writing, of any credible person.

Proceedings upon affidavit.

Art. 993. [958] 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.

When defendant is again insane.

Art. 994. [959] 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 officer.

Conviction shall be enforced, when. O. C. 791.

Art. 995. [960] 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.

CHAPTER TWO.

DISPOSITION OF STOLEN PROPERTY.

	Article
Subject to order of proper court	996
Restored on trial for theft to proper owner	997
Schedule of to be filed by officer	998
May be restored to owner, etc., when	999
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Money, how disposed of	1003
Owner may recover proceeds of property sold, or money, etc	1004
When the property is a written instrument	1005
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Claimant shall pay charges on property	1007
Charges of officer where property is sold	1008
This chapter applies to what cases	1009

Subject to order of proper court. O. C. 794.

Article 996. [961] 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.

Restored on trial for theft to proper owner. O. C. 795.

Art. 997. [962] 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.

Schedule of, to be filed by officer. O. C. 796.

Art. 998. [963] 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.

May be restored to owner, etc., when. O. C. 797.

Art. 999. [964] 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.

When delivered, bond may be required. O. C. 798.

Art. 1000. [965] 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.

Requisites of the bond, etc.

Art. 1001. [966] 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.

Property shall be sold, when and how. O. C. 800.

Art. 1002. [967] 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.

Money, how disposed of. O. C. 802.

Art. 1003. [968] 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.

Owner may recover proceeds of property sold, or money, etc. O. C. 803.

Art. 1004. [969] 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.

When the property is a written instrument. O. C. 804.

Art. 1005. [970] 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.

Proceedings to recover written instrument. O. C. 804.

Art. 1006. [971] 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.

Claimant shall pay charges on property.

Art. 1007. [972] 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.

Art. 1008. [973] 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. Charges of officer where property is sold.

Art. 1009. [974] 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. Provisions of this chapter apply to what cases. O. C. 805.

CHAPTER THREE.

REPORTS OF OFFICERS CHARGED BY LAW WITH THE COLLECTION OF MONEY.

	Article		Article
Reports of moneys collected	1010	Report to embrace all moneys except taxes	1014
What the report shall state	1011	Money collected shall be paid to county treasurer	1015
Report of moneys collected for county	1012		
What officers shall make report	1013		

Article 1010. [975] 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. Reports of moneys collected shall be made, etc. (Act May 1, 1874, p. 182, §2.)

Art. 1011. [976] The report required by the preceding article shall state— What the report shall state. Ib.

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.

Art. 1012. [977] 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. Report of moneys collected for county. Ib. §3.

Art. 1013. [978] 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 the 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 or towns. What officers shall make report. Ib. §1.

Art. 1014. [979] The moneys required to be reported embrace all moneys collected for the state or county other than taxes, but taxes are not included. Report to embrace all moneys except taxes. Ib. §2.

Art. 1015. [980] 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. Money collected shall be paid to county treasurer. O. C. 806.

CHAPTER FOUR.

OF REMITTING FINES AND FORFEITURES, REPRIEVES, COMMUTATIONS OF PUNISHMENT AND PARDONS.

	Article		Article
Governor may remit fines, etc.	1016	May commute penalty of death, etc.	1020
May remit forfeitures	1017	May delay execution of death penalty	1021
Shall file reasons for his action in office of secretary of state	1018	Governor's acts shall be under the great seal of the state, etc.	1022
May pardon treason, when	1019		

Governor may remit fines, etc. O. C. 809. (Const., art. 4, §11.)

Article 1016. [981] In all criminal actions, except treason and impeachment, the governor shall have power, after conviction, to remit fines, grant reprieves, commutations of punishment and pardons.

May remit forfeitures. Ib.

Art. 1017. [982] The governor shall have power to remit forfeitures of recognizances and bail bonds.

Shall file reasons for his action. Ib.

Art. 1018. [983] 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.

May pardon treason, when. (Const., art. 4, §11.)

Art. 1019. [984] 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.

May commute penalty of death, etc. O. C. 811.

Art. 1020. [985] 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.

May delay execution of death penalty. O. C. 812.

Art. 1021. [986] The governor may also reprieve and delay the execution of the penalty of death to any day fixed by him in a 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.

Governor's acts shall be under great seal of the state, etc.

Art. 1022. [987] 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.

TITLE XIII.

Of Inquests.

CHAPTER ONE.

INQUESTS UPON DEAD BODIES.

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Physician may be called in	1024a
Chemical analysis in certain cases	1024b
Upon what information justice may act	1025
Duty of sheriff, etc.	1026
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Testimony of witnesses to be reduced to writing, etc.	1028
Inquest may be held in private	1029
Proceedings shall not be interfered with	1030
Justice shall keep a minute book, wherein he shall set forth, etc.	1031
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Warrant shall be sufficient if, etc.	1034
If the justice find that a person killed the deceased	1035
Bail bond shall be sufficient if, etc.	1036
Warrant of arrest, when	1037
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Peace officer shall execute warrant	1039
Accused may be arrested, etc., pending inquest	1040
Justice shall certify proceedings to district court	1041
Shall preserve all evidence	1042
Witness may be required to give bail	1043

Held by whom and in what cases. O. C. 851. (Amended by Act March 17, 1887, p. 31.)

Article 1023. [988] 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.

Body may be disinterred. O. C. 852.

Art. 1024. [989] 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.

Physician may be called in. (Acts of 1893, p. 155.)

Art. 1024a. [989a] Whenever an inquest is held to ascertain the cause of a 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.

Chemical analysis provided for in certain cases.

Art. 1024b. [989b] 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.

Upon what information justice may act. O. C. 853.

Art. 1025. [990] 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.

Duty of sheriff, etc. O. C. 854.

Art. 1026. [991] 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.

Justice shall issue subpoenas. O. C. 860.

Art. 1027. [997] The justice of the peace shall have power to issue subpoenas to enforce the attendance of witnesses upon an inquest; and, in case of disobedience or failure to attend, may issue attachments for such witnesses.

Testimony of witnesses to be reduced to writing, etc. O. C. 861.

Art. 1028. [998] 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.

Inquest may be held in private. O. C. 862.

Art. 1029. [999] 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.

Proceedings shall not be interfered with. O. C. 862.

Art. 1030. [1000] 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.

Justice shall keep a minute book, wherein he shall set forth, etc. O. C. 864. (Amended by Act March 17, 1887, p. 32.)

Art. 1031. [1002] 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.

Where the killing was the act of any person.

Art. 1032. [1003] 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.

Peace officer shall execute warrant of arrest.

Art. 1033. [1004] 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.

Warrant shall be sufficient, if, etc.

Art. 1034. [1005] 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.

If the justice find that a person killed the deceased. (Amended by Act March 17, 1887, p. 32.)

Art. 1035. [1006] 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.

Bail bond shall be sufficient, if, etc.

Art. 1036. [1007] A bail bond taken before a justice shall be sufficient if it recite 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.

Warrant of arrest, when. O. C. 872. (Amended by Act March 17, 1887, p. 32.)

Art. 1037. [1008] 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.

Requisites of warrant. O. C. 873.

Art. 1038. [1009] 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.

Peace officer shall execute warrant. O. C. 874.

Art. 1039. [1010] 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.

Accused may be arrested, etc., pending inquest. O. C. 877.

Art. 1040. [1011] 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.

Justice shall certify proceedings to district court. O. C. 870. (Amended by Act March 17, 1887, p. 32.)

Art. 1041. [1012] 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.

Shall preserve all evidence.

Art. 1042. [1013] 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.

Witnesses may be required to give bail.

Art. 1043. [1014] 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.

CHAPTER TWO.

FIRE INQUESTS.

	Article		Article
Investigation shall be had upon complaint, etc	1044	Warrant shall issue for person charged, when	1048
Proceedings in such case	1045	Testimony of witnesses shall be reduced to writing, etc	1049
Verdict of jury	1046	Compensation of officers, etc	1050
Witness shall be bound over, when	1047		

Investigation shall be had upon complaint, etc. (Act June 2, 1873, p. 171, §1.)

Article 1044. [1015] 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.

Proceedings in such case. Ib. §2.

Art. 1045. [1016] The proceedings 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.

Verdict of jury. Ib. §3.

Art. 1046. [1017] 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.

Witnesses shall be bound over, when. Ib. §4.

Art. 1047. [1018] 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.

Warrant shall issue for person charged, when. Ib. §4.

Art. 1048. [1019] 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.

Testimony of witnesses shall be reduced to writing, etc. Ib. §6.

Art. 1049. [1020] 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.

Compensation of officers, etc. Ib. §5.

Art. 1050. [1021] 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.

TITLE XIV.

Of Fugitives from Justice.

	Article
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Shall not be arrested a second time, except, etc	1063
Governor of the state can demand fugitive from justice, how	1064
Reasonable pay to persons commissioned, etc.	1065
Governor may offer a reward, when	1066
Shall be published, how	1067
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Fugitive from justice delivered up, when. O. C. 873.

Article 1051. [1022] 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.

Judicial and peace officers shall aid in the arrest of. O. C. 879.

Art. 1052. [1023] 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.

Magistrate shall issue warrant for arrest of fugitive, when. O. C. 882.

Art. 1053. [1024] 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.

Complaint shall be sufficient, if it recite, etc. O. C. 883.

Art. 1054. [1025] The complaint shall be sufficient if it recite—

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.

Warrant of arrest from magistrate.

Art. 1055. [1026] 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.

Shall require bail or commit accused, when. O. C. 885.

Art. 1056. [1027] 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.

Certified transcript of indictment, evidence. O. C. 886.

Art. 1057. [1028] A properly certified transcript of an indictment against the accused shall be evidence to show that he is charged with the crime alleged.

Person arrested shall not be committed, or, etc. O. C. 887.

Art. 1058. [1029] A person arrested under the provisions of this title shall not be committed or held to bail for a longer time than ninety days.

Magistrate shall notify secretary of state, etc. O. C. 888.

Art. 1059. [1030] 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.

Shall also notify district or county attorney, who shall notify, etc.

Art. 1060. [1031] 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.

Secretary of state shall communicate information, etc.

Art. 1061. [1032] The secretary of state upon receiving information, as provided in article 1059, 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.

Accused shall be discharged, when. O. C. 889.

Art. 1062. [1033] 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.

Shall not be arrested a second time, except, etc. O. C. 890.

Art. 1063. [1034] A person who shall have been once 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.

Governor of this state can demand fugitive from justice, how. O. C. 881.

Art. 1064. [1035] 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.

Reasonable pay to person commissioned, etc. O. C. 881.

Art. 1065. [1036] 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.

Governor may offer a reward, when.

Art. 1066. [1037] 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.

Shall be published, how.

Art. 1067. [1038] 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.

Reward shall be paid by state.

Art. 1068. [1039] 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.

TITLE XV.

Of Costs in Criminal Actions.

CHAPTER ONE.

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Certain officers shall keep fee books. (Act Aug. 23, 1876, p. 203, §22.)

Article 1069. [1040] 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.

Fee book shall show, what.

Art. 1070. [1041] 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.

No costs not provided for by law.

Art. 1071. [1042] No item of costs in a criminal action or proceeding shall be taxed that is not expressly provided for by law.

Costs payable in lawful currency. (Act Aug. 23, 1876, p. 284, §1.)

Art. 1072. [1043] All costs in criminal actions or proceedings shall be due and payable in the lawful currency of the United States.

No costs payable until, etc. Ib. p. 293, §23.

Art. 1073. [1044] 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.

Bill of costs shall accompany case, when.

Art. 1074. [1045] 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 the 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.

Costs shall not be taxed after defendant has paid.

Art. 1075. [1046] 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.

Costs may be retaxed, when and how.

Art. 1076. [1047] 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.

Fee book evidence, etc.

Art. 1077. [1048] 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.

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Fees paid to attorney-general. (Acts 22d Leg., S. S., ch. 16, §59.)

Article 1078. [1049] 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.

Fees to clerk of court of criminal appeals. Ib. §60.

Art. 1079. [1050] 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.

Fees to be audited. Ib. §61.

Art. 1080. [1051] 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.

Fees to district and county attorney. Ib. §62. Amend. 1895, p. 148.

Art. 1081. [1052] 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 house of correction and state reformatory 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.

Where there are several defendants.

Art. 1082. [1053] 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.

Fees to sheriff or constable. (Acts 22d Leg., S. S., ch. 23.) Amend. 1895, p. 146.

Art. 1083. [1054] 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 shall be allowed.

2. For summoning or attaching each witness, fifty cents.

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 or 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 necesarily 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 subdivision, 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 rule prescribed in subdivision 6 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 willfully 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.

When services are rendered by peace officer other than sheriff. O. C. 953, 954.

Art. 1084. [1055] 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 therefore 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.

Sheriff shall not charge fees or mileage, when. (Act March 31, 1885, p. 76.)

Art. 1085. [1055a] 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.

Fees of district clerk in felony cases. (Acts 21st Leg., ch. 45.)

Art. 1086. [1056] 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 1083, Code of Criminal Procedure, the sum of fifty cents.

Officer shall make out cost bill and what it shall show. (Acts of 1879, Ex. Ses., ch. 46.)

Art. 1087. [1057] 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 severed 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.

Duty of judge to examine bill, etc. Ib.

Art. 1088. [1058] 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 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.

Duty of comptroller on receipt of copy of bill. Ib. (Amended by Act April 11, 1883, p. 75.)

Art. 1089. [1059] 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.

No costs paid by state, when. O. C. 952d.

Art. 1090. [1060] In cases where the defendant is indicted for a felony and is convicted of an offense less than felony, no costs shall be paid by the state to any officer.

Costs paid by state a charge against defendant, except. O. C. 956.

Art. 1091. [1061] 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.

Fees in examining courts, etc. (Act March 3, 1883, p. 22.)

Art. 1092. [1061a] 1. County judges, justices of the peace, sheriffs, constables, district and county attorneys and district clerks shall be allowed the following fees:

2. 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.

3. Sheriffs and constables serving process and attending any examining court in the examination of any felony case shall be enti-

tled 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.

4. 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.

5. The fees mentioned in sections 2, 3 and 4 of this act shall become due and payable only after the indictment of the defendant for the offense with which he was charged in the examining court, and upon an itemized account sworn to by the officers claiming such fees, and approved by the judge of the district court.

6. 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 the the 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.

7. 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.

Fees of attached witnesses in felony cases. (Act April 23, 1883, p. 117.)

Art. 1093. [1061b] 1. Any witness who may have been recognized, or attached, and given bond for his appearance before any court 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 by the nearest practicable conveyance, and one dollar per day for each day he may be necessarily absent from home as a witness in such case.

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 the 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.

CHAPTER THREE.

OF COSTS PAID BY COUNTIES.

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Article 1094. [1062] 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 shall be liable for what costs. O. C. 957.

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.

Shall be responsible for food and lodging of jurors. O. C. 958.

Art. 1095. [1063] 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.

Juror may pay his own expenses and draw scrip. O. C. 959.

Art. 1096. [1064] 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.

Allowance to sheriff for prisoners. (Act Aug. 23, 1876, p. 290, §11.)

Art. 1097. [1065] 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 any number of prisoners not exceeding four he shall be paid for each prisoner, for each day, not exceeding forty-five cents.

2. For any number of prisoners exceeding four, for each prisoner, for each day, not exceeding thirty cents.

3. 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.

4. The reasonable funeral expenses in case of death.

Allowance for guards. Ib.

Art. 1098. [1066] The sheriff shall be allowed for each guard necessarily employed in the safe keeping of prisoners one dollar and fifty cents for each day, and there shall not be any allowance made for the board of such guard, nor shall any allowance be made for jailer or turnkey.

Sheriff shall pay what expenses, to be reimbursed by county. O. C. 961.

Art. 1099. [1067] 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.

Sheriff shall present account to district judge. O. C. 962.

Art. 1100. [1068] 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.

Judge shall examine account, etc. O. C. 983.

Art. 1101. [1069] 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.

Judge shall give sheriff draft upon county treasurer. O. C. 964.

Art. 1102. [1070] 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.

Account for keeping prisoners.

Art. 1103. [1071] 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.

Commissioners' court shall examine account and order draft, etc.

Art. 1104. [1072] 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.

Expenses, etc., of prisoner from another county.

Art. 1105. [1073] 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 1071, 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.

Same subject.

Art. 1106. [1074] 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.

Same in case of change of venue. (Act March 18, 1881, p. 52.)

Art. 1107. [1074a] 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.

Same subject. Ib.

Art. 1108. [1074b] 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 1106 of this Code.

Fees of county judge. (Acts of 1879, Ex. Ses., ch. 44.)

Art. 1109. [1075] 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.

How collected. Ib.

Art. 1110. [1076] 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.

Fee of justice for holding an inquest. (Act Aug. 23, 1876, p. 291, §12; amended by Act March 31, 1883, p. 39.)

Art. 1111. [1077] 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.

Commissioners' court shall act upon account.

Art. 1112. [1079] 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.

Pay of petit jurors. (Act Feb. 21, 1879; amended by Act March 15, 1881, p. 32.)

Art. 1113. [1081] Each juror who serves in the trial of any criminal case in any court having criminal jurisdiction, or who has been sworn as a juror for the term or week, shall receive two dollars 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 jurors in justices' 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 courts shall receive more than one dollar for each day or fraction of a day he may serve as such juror.

If not sworn, not entitled to pay.

Art. 1114. [1082] 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.

Pay of grand jurors. (Act Feb. 16, 1883, p. 11, amending Revised Code.)

Art. 1115. [1083] Grand jurors shall each receive two dollars per day for each day and for each fraction of a day that they may serve as such.

Pay of bailiffs.

Art. 1116. [1084] 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.

Certificates for pay of jurors and bailiffs.

Art. 1117. [1085] 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.

Drafts and certificates receivable for county taxes. O. C. 968.

Art. 1118. [1086] 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 officer or officers of a county shall defeat the right of a holder of any such draft or certificate to pay county taxes therewith.

CHAPTER FOUR.

OF COSTS TO BE PAID BY DEFENDANT.

Article

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I. IN THE COURT OF CRIMINAL APPEALS.

Fees of attorney-general in misdemeanor cases. (Acts 22d Leg., ch. 16, §63.)

Article 1119. [1087] 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.

Clerk allowed fees not to exceed $2500 per annum. Ib. §64.

Art. 1120. [1088] 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.

Shall be taxed against defendant.

Art. 1121. [1089] The fees named in the preceding sections shall be taxed against the defendant and collected as in other cases.

Costs when taxed against defendant. Ib. §21.

Art. 1122. 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 and his sureties on his recognizance, for which execution shall issue as in other cases of appeal to the court of criminal appeals. Should such case be reversed by the court of criminal appeals and a new trial be had in the court below, and the defendant convicted, then the costs aforesaid in favor of the clerk of the court of criminal appeals shall be taxed by the court below against the defendant, and a certified copy of said bill of costs by the clerk of the court of criminal appeals, filed in the court below, shall be sufficient to require said costs to be taxed and collected as other costs against the defendant in the court below.

II. IN THE DISTRICT AND COUNTY COURTS.

Fees of district and county attorneys. (Act Aug. 23, 1876, p. 284, §7.)

Art. 1123. [1090] District and county attorneys shall be allowed the following fees, to be taxed against the defendant:

1. For every conviction under the laws against gaming when no appeal is taken, or when on appeal the judgment is affirmed, fifteen dollars.

2. For every other conviction in cases of misdemeanor where no appeal is taken, or where on appeal the judgment is affirmed, ten dollars.

In case of joint defendants.

Art. 1124. [1091] 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.

Attorney appointed entitled to the fee.

Art. 1125. [1092] 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.

Fees of district and county clerks. (Act Aug. 23, 1876, p. 289, §10.)

Art. 1126. [1093] 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 subpoena, 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.

Art. 1127. [1094] 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: Fees of sheriff and other peace officers. Ib. §11. Amend. 1895, p. 182.

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.

III. IN JUSTICES', MAYORS' AND RECORDERS' COURTS.

Art. 1128. [1095] 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: Fees of justices, mayors and recorders. Ib. §12.

1. For each warrant, seventy-five cents.

2. For each bond taken, fifty cents.

3. For each subpoena 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 examinations for offenses, for each one hundred words, twenty cents.

Fees of constables and other peace officers.

Art. 1129. [1096] 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.

Fees of state's attorney.

Art. 1130. [1097] 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.

In case of several defendants, and where defendant pleads guilty.

Art. 1131. [1098] 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.

No fee allowed attorney, etc.

Art. 1132. [1099] 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, but in case he has taken no action, a fee of five dollars shall be taxed, for the benefit of the county, instead thereof; and in no case shall the county or district attorney, in consideration of a plea of guilty, remit any part of his lawful fee.

IV. JURY AND TRIAL FEES.

In district and county courts.

Art. 1133. [1100] 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.

Trial fee in county courts.

Art. 1134. [1101] 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.

Jury fee in justices', mayors' and recorders' courts.

Art. 1135. [1102] 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.

Where there are several defendants.

Art. 1136. [1104] 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.

Jury fees colleted as other costs, etc.

Art. 1137. [1105] 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.

V. WITNESS FEES.

Fees of witnesses in criminal cases. O. C. 454.

Art. 1138. [1106] 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.

Shall be taxed against defendant, upon, etc. O. C. 457.

Art. 1139. [1108] 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.

No fees allowed, unless, etc.

Art. 1140. [1109] No fees shall be allowed to a person as witness fees unless such person has been subpoenaed, attached or recognized as a witness in the case.

Clerk, etc., shall keep book in which shall be entered, etc.

Art. 1141. [1110] 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 subpoenaed, attached or recognized to testify therein, showing whether on the part of the state or the defendant.

Witness liable for costs, when. O. C. 979.

Art. 1142. [1111] In all criminal cases where a witness has been subpoenaed 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 subpoena.

TITLE XVI.

Commissions on Money Collected.

Article
Commissions allowed district and county attorneys 1143
Article
Commissions allowed sheriff or other officer 1144

Commissions allowed district and county attorneys. (Acts of 1879, ch. 126, p. 133.)

Article 1143. [1112] 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.

Commissions allowed sheriff or other officer. (Act Aug. 23, 1876, p. 287, §7.) (Acts 21st Leg., April 2, 1889, ch. 85, p. 95, §12.) Ib. §14.

Art. 1144. [1113] 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.

TITLE XVII.

House of Correction and Reformatory.

When confined in house of correction....Article 1145 | Escape from .....Article 1146

When confined in house of correction. (Acts 21st Leg., April 2, 1889, ch. 85, p. 95, §12.) Amend. 1895, p. 94.

Article 1145. When upon the trial and conviction of any person in this state of a felony it is found by the verdict of the jury the defendant is not more than sixteen years of age, and the verdict of conviction is for confinement for five years or less, the judgment and sentence of the court shall be that the defendant be confined in the house of correction and reformatory instead of the penitentiary for the term of his sentence, and that such defendant be conveyed to the house of correction and reformatory by the proper authority and there confined for the period of his sentence, and for such service such officer shall be paid the same fees that he would be allowed for conveying such convicts to the penitentiary; provided, that the age of the defendant shall not be admitted by the attorney representing the state, and it shall be proved by full and sufficient evidence that the defendant is not more than sixteen years of age before the judgment herein provided for shall be entered; provided, the jury convicting shall say in their verdict whether the convict shall be sent to the penitentiary or to the reformatory.

Escape from. Ib.

Art. 1146. If any person confined in the house of correction and reformatory shall escape therefrom, it shall be the duty of any sheriff or peace officer to apprehend and detain him, and to report the same to the superintendent of the house of correction and reformatory, and they shall be returned in the same manner and under the same laws as are provided for the return of convicts escaped from the penitentiaries. And it shall be lawful for any person to apprehend such escaped inmate, and it shall be the duty of any person who apprehends such escaped inmate to immediately deliver him to the sheriff or nearest constable of the county where such arrest has been made, who shall retain him until returned as hereinbefore provided.

Ib. §14.

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